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OMNIBUS BUDGET RECONCILIATION ACT OF 1987

EXPLANATION OF PROVISIONS APPROVED BY THE COMMITTEE ON DECEMBER 3, 1987 FOR INCLUSION IN LEADERSHIP DEFICIT REDUCTION AMENDMENT

COMMITTEE ON FINANCE
UNITED STATES SENATE

Lloyd Bentsen, *Chairman*

DECEMBER 1987

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CONTENTS

Page

SUBTITLE A: DESCRIPTION OF SPENDING PROVISIONS 1

Medicare Part A 3

1. Hospital Prospective Payment System (PPS) 3
2. Hospital Capital 3
3. Direct Medical Education Payments for Foreign Medical Graduates 3
4. Sole Community Hospitals 3
5. Rural Referral Centers 4
6. Treatment of Certain Rural Hospitals as Urban Hospitals 4
7. Pacemaker Warranties 4

Medicare Parts A and B 4

8. Continuation of Sequester Through December 31, 1987 4
9. Managing Contractor Restrictions 4
10. Peer Review Organization Provisions 4
11. Medicare Health Maintenance Organization Provisions 4

Medicare Part B 5

12. Temporary Freeze on Payments for Physician Services and Durable Medical Equipment 5
13. Physician Payment Updates 5
14. Overpriced Procedures 5
15. Clinical Lab Provisions 6
16. Part B Deductible 6
17. Therapeutic Shoes 6
18. Eye and Ear Hospitals 6

Medicaid 6

19. Infant Mortality 6
20. Nursing Home Quality 6
21. Home and Community-Based Waivers 7
22. Respite Care 7
23. Metropolitan HMO 7
24. Spousal Impoverishment 7
25. Medicaid Cap for Puerto Rico and Territories 7

Page

Income Security and Social Services 7

26. Personal Needs Allowance for SSI Recipients 7
27. Increase in Funding for Title XX 7
28. Assistance to Homeless AFDC Families 8

Table No. 1 9

Statutory Language of Spending Provisions 12

SUBTITLE B: DESCRIPTION OF REVENUE PROVISIONS 143

A. Accounting Provisions 143

1. Repeal of vacation pay reserve (sec. 4501) 143
2. Repeal of installment method for dealers (sec. 4502) 144
3. Treatment of past service pension costs under uniform capitalization rules (sec. 4503) 147
4. Certain farm corporations required to use the accrual method of accounting (sec. 4504) 148

B. Estimated Tax Provisions 151

1. Corporate estimated tax reform (sec. 4511) 151
2. Revised withholding certificates required to be put into effect more promptly (sec. 4512) 152
3. Estimated tax penalties for 1987 (sec. 4513) 153
    a. Delay of increase in current year liability test for individuals 153
    b. Corporations may use 1986 tax to determine certain estimated tax installments due before July 1, 1987 154

C. Corporate Provisions 156

1. Certain earnings and profits adjustments not to apply for certain purposes (overrule *Woods Investment Co.*) (sec. 4521) 156
2. Benefits of graduated corporate rates not allowed to personal service corporations (sec. 4522) 159

D. Partnership Provisions 160

1. Treatment of publicly traded partnerships under the passive loss rule (sec. 4531) 160
2. Study of tax treatment of publicly traded partnerships (sec. 4531b) 163

E. Child and Dependent Care Credit: Deny Eligibility of Overnight Camp Expenses for Credit (sec. 4541). 165

F. Pension Provisions 166

Page

1. Modify full funding limitation (sec. 4551) 166
2. Minimum funding standard and deductions .. 167
    a. Additional funding requirements (sec. 4552) 167
    b. Time for making contributions (sec. 4553) 177
    c. Liability of members of controlled group for taxes on failure to meet minimum funding standards (sec. 4554) 179
    d. Funding waivers (sec. 4555) 181
    e. Amortization periods (sec. 4556(a)) 183
    f. Actuarial assumptions must be reasonable (sec. 4556(b)) 184
    g. Limitation on deduction for contributions to certain plans not less than unfunded current liability (sec. 4556(c)) 185
3. Treatment of plan terminations (secs. 4557–4559) 185
4. Employer access to assets of overfunded plans 191
5. Increase in PBGC premium rates (sec. 4560) . 193
6. Multiemployer plans 195

G. Estate and Gift Taxes: Retention of 1987 Rates for 2 Years (sec. 4561) 196

H. Excise Taxes 197

1. Telephone excise tax: 3-year extension (sec. 4571) 197
2. Collect diesel fuel and special motor fuels taxes on sales to retailers (sec. 4572) 197
3. Extension of termination date for coal excise tax rate (sec. 4573) 198

I. Employment Taxes 200
1. Railroad retirement provisions (secs. 4581–4584) 200
2. FUTA tax: 3-year extension of repayment tax; transfer of funds into the Federal unemployment account (secs. 4585–4586) 201
3. FICA tax provisions 202
    a. Expand employer share of FICA tax to include all cash tips (sec. 4587) 202
    b. Extend FICA tax to include inactive duty earnings of military reservists and certain other earnings (secs. 4588, 4589, 4591, and 4592) 203
    c. Treatment of group-term life insurance as wages under FICA (sec. 4590). 204

J. User Fees 205

Page
1. Internal Revenue Service fees (sec. 4595) 205
2. Extensions and increases in certain alcohol, tobacco, and firearms occupational taxes (sec. 4596) 206
3. Customs user fees (sec. 4597) 208

K. Collection of Nontax Debts Owed to Federal Agencies: 3-Year Extension (sec. 4601) 211

L. Estate Tax Deduction for Sales to an ESOP (secs. 4611–4613) 213

ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS 219

Table No. 2 219

APPENDIX: STATUTORY LANGUAGE OF AMENDMENT 220

SUBTITLE A—DESCRIPTION OF SPENDING PROVISIONS

FINANCE COMMITTEE SPENDING PROVISION AMENDMENTS (SUBMITTED FOR INCLUSION IN THE LEADERSHIP DEFICIT REDUCTION PACKAGE)

The Committee approved the following Medicare provisions. Unless noted otherwise, the effective dates in the original Committee bill and the amendments described below would generally be January 1, 1988.

MEDICARE PART A

1. Hospital Prospective Payment System (PPS): Effective January 1, 1988, urban hospital payment rates would be increased by 0.5 percent, rural hospital payment rates by 3.7 percent, and rates for PPS-exempt hospitals by 2.7 percent. The 3.2 percentage point differential between urban and rural hospitals created in the original Committee bill would be maintained.

2. Hospital Capital: Effective January 1, 1988, Medicare capital payments would be paid at reasonable cost minus twelve percent for the remainder of FY 1988 and for FY 1989. The moratorium on incorporating hospital capital into PPS would be extended from two years in the original Committee bill to four years.

3. Direct Medical Education Payments for Foreign Medical Graduates: Effective for cost reporting periods beginning on or after July 1, 1988, Medicare direct medical education payments for graduates of foreign medical schools (other than Canada) would be phased out. For most hospitals, payments would be reduced by one-third in the first year, and two-thirds in the second year and would be eliminated in the third year. For those hospitals in which more than half the interns and residents are foreign medical graduates, a longer transition would apply--payments would be reduced by one-third in each of the first two years, two-thirds in each of the following three years, and would be eliminated thereafter. The provision would not affect indirect medical education payments.

4. Sole Community Hospitals: As in the original bill, this provision would become effective October 1, 1987. Additional volume adjustment payments made available under the original Committee bill would be capped at $10 million in FY 1988 and $12 million in FY 1989.

5. Rural Referral Centers: The eligibility threshold for rural referral center status under PPS would be reduced to 3000 discharges per year, (from the current criterion of 5000 annual discharges), but only for rural hospitals with a case mix index that exceeds both the regional and national medians for urban non-teaching hospitals. The provision would be budget-neutral.

6. Treatment of Certain Rural Hospitals as Urban Hospitals: The original Committee provision allowing certain rural hospitals to be paid urban rates under PPS would be modified, on a budget-neutral basis, to eliminate the wage-related criteria.

7. Pacemaker Warranties: Hospitals would be required to report the payments they obtain in connection with pacemaker replacements made under warranty. Medicare payments to the hospital would be reduced at the end of the year by the amount of such payments. The provision would be effective January 1, 1988.

MEDICARE PARTS A AND B

8. Continuation of Sequester Through December 31, 1987: The 2.324 percent reduction in Medicare payments under the sequester currently in effect would be extended through December 31, 1987, except that the reduction would continue through January 15, 1988 for physician services and durable medical equipment.

9. Managing Contractor Restrictions: The original Committee provision prohibiting the use of denial quotas by Medicare contractors would be modified to confirm the authority of the Secretary of HHS to manage Medicare contractors effectively.

10. Peer Review Organization Provisions: The authority of the Office of Management and Budget to apportion funds for Medicare Peer Review Organizations would be eliminated. The on-site review requirements in the original Committee bill would be modified to limit the requirement to rural hospitals and reduce the percentage of on-site reviews from 50 to 20 percent.

11. Medicare Health Maintenance Organization Provisions:

a. HMOs would be required to guarantee continuation of certain supplemental coverage in the event they terminate operations under Medicare.

b. HMOs would be required to inform beneficiaries of the possibility that the HMO's participation in Medicare will not continue indefinitely.

c. The Prospective Payment Assessment Commission, in consultation with the Physician Payment Review Commission, would be required to appoint a task force on capitation payment reform.

d. Medicare would continue to pay HMOs for disabled enrollees as disabled enrollees after they attain age 65.

e. Authority for the benefit stabilization fund would be continued for two additional years.

f. The Secretary would be required to waive the 50-50 rule for Blue Care of Michigan and HIP of New York.

MEDICARE PART B

12. Temporary Freeze on Payments for Physician Services and Durable Medical Equipment: For the first three months of calendar year 1988, Medicare payment rates for physician services and durable medical equipment would be frozen at 1987 levels. (Except that, as noted above under Item 8, for the first fifteen days of January 1988, the 2.324 percent reduction in payment amounts under the sequester currently in effect would continue to apply to these payment amounts.) In addition, the maximum allowable actual charges in effect for 1987 would be frozen for the first three months of 1988. All participation agreements in effect on December 31, 1987, would continue through March 31, 1988, unless the physician or supplier requests that the agreement be terminated. The deadline for agreements to participate in Medicare in 1988 would be extended to March 31, 1988.

13. Physician Payment Updates: On April 1, 1988, customary charges for physicians would be updated. The update in prevailing charges would be zero percent, except for primary services as defined in the original Committee provision (office, home, nursing home and emergency room visits). The update for primary services would be 3.6 percent.

14. Overpriced Procedures: The list of overpriced procedures in the original Committee bill would be expanded to include cardiac pacemaker implantation. Effective April 1, 1988, prevailing charges for these procedures would be reduced on a sliding scale basis as in the original Committee bill, except that the maximum reduction would be increased to 15 percent.

15. Clinical Lab Provisions: Effective January 1, 1988, the fee schedules for clinical laboratories would be rebased to reflect a five percentage point reduction. The limit on fee schedules, effective on January 1, 1988, would be 100 percent of the national median and, effective January 1, 1989, would be reduced to no less than 95 percent of the national median. The Secretary of HHS would be authorized to apply intermediate sanctions to clinical laboratories that fail to meet Medicare standards.

16. Part B Deductible: Effective January 1, 1989, the Part B deductible would be increased from $75 to $85.

17. Therapeutic Shoes: Medicare coverage of therapeutic shoes would be implemented, as under the original Committee bill, but only if proven cost-effective by a demonstration project.

18. Eye and Ear Hospitals: The provision in the original Committee bill would be modified to include eye specialty hospitals as well as eye and ear specialty hospitals. In addition, the threshold for qualifying for the exemption from the current law transition scheduled to begin on October 1, 1988 would be reduced from 50 percent of outpatient procedure revenue to 30 percent of outpatient service revenue.

MEDICAID

19. Infant Mortality: The bill originally reported by the Committee would be modified to reduce eligibility income limits for pregnant women and infants up to age 1 from 185 percent to 160 percent of the federal poverty level. A monthly premium of $5.00 would be charged families with incomes between 130 percent and 160 percent of the federal poverty level. Expanded coverage of children meeting Aid to Families with Dependent Children (AFDC) income and asset standards, but not eligible for AFDC payments, would be modified to mandate coverage through age six. Coverage for children through age eight would be a State option.

20. Nursing Home Quality: The nursing home quality provisions included in the original Committee bill would be modified:

a. Authority to waive the nurse staffing requirements would be granted to the State (with the Secretary maintaining "look-behind" responsibility);

b. Minimum hours of nurse aide training would be reduced to 75 hours;

c. Persons with Alzheimer's disease or related disorders would be excluded from the pre-admission screening requirements;

d. States would be required to submit State plan amendments detailing how payments would be adjusted to meet new requirements applied to nursing homes;

e. Nursing homes would be required to provide an activities program directed by a qualified professional; and,

f. Other miscellaneous and technical changes would be made.

21. Home and Community-Based Waivers: New waiver authority provided under the original Committee bill would be modified to limit growth in annual spending on long-term care to 7, rather than 9 percent. The provision of the original Committee bill dealing with waivers awarded before March 1985 would be deleted.

22. Respite Care: Technical corrections related to the respite care pilot project in New Jersey would be included.

23. Metropolitan HMO: The six-month lock-in and guarantee currently authorized for Federally qualified HMOs would be authorized for the Metropolitan Health Plan HMO operated by the New York City public hospitals.

24. Spousal Impoverishment: The section relating to spousal impoverishment included in the original Committee bill would be deleted.

25. Medicaid Cap for Puerto Rico and Territories: The provision increasing the Medicaid cap for Puerto Rico and the Territories included in the original Committee bill would be deleted.

INCOME SECURITY AND SOCIAL SERVICES

26. Personal Needs Allowance for SSI Recipients: The original Committee bill would have increased the personal needs allowance for Supplemental Security Income recipients who are in Medicaid institutions by $5 a month (from $25 to $30), effective January 1, 1988. The effective date of the provision would be delayed for 6 months, to July 1, 1988.

27. Increase in Funding for Title XX: The entitlement cap for the title XX social services program is increased by $50 million for FY 1988, from $2.7 billion to $2.750 billion. The original Committee bill had provided for an increase of $100 million for FY 1988.

28. Assistance to Homeless AFDC Families: The Secretary of Health and Human Services would be prohibited from taking any action (by regulation or otherwise) to prevent a State, prior to October 1, 1988, from meeting the needs of homeless families with children as part of its AFDC "special needs" program. Amounts for shelter and related needs may vary according to geographic location, family circumstance, or the type of living accommodation occupied.

Senate Finance Spending Programs
Administration Estimates (Outlays in millions) 1/
(Provisions changed from original Finance bill noted with an asterisk)

	FY 1988	FY 1989
Medicare Part A		
Cash flow: Eliminate PIP for Disp. Share	0	(480)
Indirect Medical Education *	(340)	(550)
Prospective Payment System Update *	(410)	(430)
Capital Payments reduction *	(180)	(110)
Sole Community hospital increase *	10	12
Phase out payment for foreign med. grads *	(5)	(40)
Extend GRH through 12/31/87 *	(120)	0
Medicare Parts A and B		
Cash Flow: Payment Cycle Floors	(530)	(190)
NHSC loan collection	(12)	(16)
Payment Safeguard Add-on	10	10
Minor Provisions *	1	5
Peer Review Organization Requirements *	5	20
Medicare Part B		
Payments for New physicians	(30)	(90)
Outpatient Radiology	0	(40)
Eliminate ROE for outpatient departments	(20)	(40)
Increase Mental Health limit to $1100	50	90
Bonus for rural physicians	0	5
More coverage of physician assistants	0	0
Part B premium extension 1/	0	(860)
Medicare Economic Index and MD prices *	(180)	(380)
Overpriced physician procedures *	(20)	(50)
Durable Medical Equipment (DME) *	(30)	(50)
Clinical lab limits *	(100)	(190)
Change Part B Deductible to $85 in FY89 *	0	(130)
Therapeutic Shoes *	0	0
Extend GRH through 12/31/87 for all Part B, through 1/15/88 for physicians and DME *	(100)	0
Total Medicare	(2,001)	(3,504)
Medicaid		
Nursing Home Quality *	6	95
Infant Mortality *	0	155
HCBW Revisions *	0	0
Quality Control Moratorium and Other	13	(13)
Income Security		
Title XX (Social services) *	48	2
Infant Foster Care	5	6
Personal Needs Allowance *	3	13
Other	1	3
Total Net Entitlement Savings	(1,925)	(3,243)

1/ Estimates reflect changed effective dates and interactions within the Medicare program. Gross spending estimates are reflected for Part B provisons. Premium effects of all Part B items is reflected in the Part B premium estimate.

TITLE IV—COMMITTEE ON FINANCE

Subtitle A—Health, Social Services, and Income Security

SEC. 4000. TABLE OF CONTENTS.

Subtitle A—Health, Social Services, and Income Security

Sec. 4000. Table of contents.

PART A—PROVISIONS WITH MAJOR BUDGETARY IMPACT

SUBPART I—PROVISIONS AFFECTING MEDICARE PART A

Sec. 4001. Hospital payments.
Sec. 4002. Medical education.
Sec. 4003. Payments for hospital capital-related costs.
Sec. 4004. Elimination of periodic interim payment system (PIP) for certain hospitals and extension of disproportionate share adjustment.

SUBPART II—PROVISIONS AFFECTING MEDICARE PARTS A AND B

Sec. 4011. Payment cycle standards.
Sec. 4012. Medicare contractors.
Sec. 4013. Secondary payer provisions.
Sec. 4014. Extension of reductions under sequester order.

SUBPART III—PROVISIONS AFFECTING MEDICARE PART B

Sec. 4021. Physician payments.
Sec. 4022. Payments to hospital outpatient departments for radiology.
Sec. 4023. Part B Premium.
Sec. 4024. Coverage of mental health services.
Sec. 4025. Return on equity payments to outpatient departments.
Sec. 4026. Updating maximum rate of payment per visit for independent rural health clinics.
Sec. 4027. Coverage of certified nurse-midwife services under part B of medicare.
Sec. 4028. Psychologist services in clinics.
Sec. 4029. Payment for therapeutic shoes for individuals with severe diabetic foot disease.
Sec. 4030. Durable medical equipment.
Sec. 4031. Services of a physician assistant.
Sec. 4032. Payment for ambulatory surgery at eye, and eye and ear, specialty hospitals.
Sec. 4033. Clinical diagnostic laboratory tests.
Sec. 4034. Increase in part B deductible.

SUBPART IV—PROVISIONS AFFECTING PRO'S

Sec. 4041. Reforms of peer review program.

SUBPART V—PROVISIONS AFFECTING MEDICAID

Sec. 4051. Nursing home quality.
Sec. 4052. Medicaid benefits for poor children and pregnant women.
Sec. 4053. Waiver authority under the medicaid program for the Northern Mariana Islands.
Sec. 4054. Federal review of State inspection of care (IOC) Determinations.
Sec. 4055. Provision of family planning services to individuals enrolled with a health maintenance organization.
Sec. 4056. Optional medicaid coverage of individuals in certain States receiving only optional State supplementary payments.

SUBPART VI—SOCIAL SERVICES AND INCOME SECURITY

Sec. 4061. Increased funding for social services block grant; extension of social services and child welfare services to American Samoa.

Sec. 4062. 2-year extension of foster care ceiling and of authority to transfer foster care funds to child welfare services.
Sec. 4063. Permanent extension of authority for voluntary foster care placements.
Sec. 4064. Mother/infant foster care.
Sec. 4065. Increase in personal needs allowance for SSI recipients.
Sec. 4066. Increase in SSI emergency advance payments.
Sec. 4067. Authority of Secretary to suspend penalty for transferring assets for less than fair market value.
Sec. 4068. Disregard of AFDC under SSI retrospective accounting.
Sec. 4069. Exclusion of real property when it cannot be sold.
Sec. 4070. Exclusion of interest on burial accounts.
Sec. 4071. Permanent extension of disregard of in-kind assistance to SSI and AFDC recipients.
Sec. 4072. Exclusion of death benefits to the extent spent on last illness and burial.
Sec. 4073. Continuation of full benefit standard for individuals temporarily institutionalized.
Sec. 4074. Treatment of certain couples in medical institutions.
Sec. 4075. Extending from 3 to 6 the number of months that an individual in a public emergency shelter can be eligible for SSI.
Sec. 4076. Special notice to blind SSI recipients.
Sec. 4077. Rehabilitation services for blind SSI recipients.
Sec. 4078. Retention of medicaid when SSI benefits are lost upon entitlement to early widow's or widower's insurance benefits.
Sec. 4079. Extension of deadline for disabled widows and widowers to apply for medicaid protection.

Part B—Other Provisions

SUBPART I—MEDICARE PROVISIONS

Sec. 4081. Home health and skilled nursing facility provisions.
Sec. 4082. Office of rural health policy.
Sec. 4083. Set aside for experiments and demonstration projects relating to rural health care issues.
Sec. 4084. Technical amendments related to certified registered nurse anesthetists.
Sec. 4085. Demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to medicare beneficiaries.
Sec. 4086. Waiver of inpatient limitations for the Connecticut Hospice.
Sec. 4087. Technical correction relating to certification of podiatric teaching programs.
Sec. 4088. Provision of offsite comprehensive outpatient rehabilitation services.
Sec. 4089. Medicare hearings and appeals.
Sec. 4090. Moratorium on laboratory payment demonstration.
Sec. 4091. Permitting disabled individuals to renew entitlement to medicare after gainful employment without a 2-year waiting period.
Sec. 4092. Health maintenance organization reforms.
Sec. 4093. Recovery of payments for certain pacemaker devices.

SUBPART II—MEDICAID PROVISIONS

Sec. 4101. Home and community-based services for the elderly.
Sec. 4102. Treatment of Garden State Health Plan.
Sec. 4103. Medicaid matching rate for quality review of HMO services.
Sec. 4104. Physicians' services furnished by dentists.
Sec. 4105. New York State pilot program for prenatal, maternity, and newborn care.
Sec. 4106. Medicaid waiver for hospice care for AIDS patients.
Sec. 4107. Delay quality control sanctions for medicaid.
Sec. 4108. Technical amendments relating to New Jersey respite care pilot project.
Sec. 4109. Continued eligibility and restriction on disenrollment without cause for Metropolitan Health Plan HMO.

SUBPART III—SOCIAL SERVICES AND INCOME SECURITY

Sec. 4111. National Commission on Children.
Sec. 4112. Boarder babies demonstration project.
Sec. 4113. Study of infants and children with AIDS in foster care.
Sec. 4114. Child support demonstration program in New York State.

Sec. 4115. Demonstration of family independence program.
Sec. 4116. Repeal of unnecessary child support revolving fund.
Sec. 4117. Demonstration program to assist homeless individuals in obtaining SSI benefits.
Sec. 4118. Modification of interim assistance reimbursement program.
Sec. 4119. Demonstration program to provide self-employment allowance for eligible individuals.
Sec. 4120. Modification of effective date with respect to State compliance with certain requirements regarding extended benefits under the unemployment insurance program.
Sec. 4121. Assistance to homeless AFDC families.

Subtitle A—Health, Social Services, and Income Security

PART A—PROVISIONS WITH MAJOR BUDGETARY IMPACT

Subpart I—Provisions Affecting Medicare Part A

SEC. 4001. HOSPITAL PAYMENTS.

(a) Applicable Percentage Increase in Payments for Inpatient Hospital Services.—

(1) Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(A) in clause (i)—

(i) in the matter preceding subclause (I), by striking "year and for purposes of subsection (d) for discharges occurring during a fiscal year," and inserting in lieu thereof "year,",

(ii) in subclause (II), by striking "percent," and all that follows through "and" and inserting in lieu thereof "percent,",

(iii) by redesignating subclause (III) as subclause (V),

(iv) by inserting after subclause (II) the following new subclauses:

"(III) for fiscal year 1988, 2.7 percent,

"(IV) for fiscal years 1989 and 1990, the market basket percentage increase (as defined in clause (iii)), and", and

(v) in subclause (V) (as redesignated by subparagraph (C)), by striking "1989" and inserting in lieu thereof "1991";

(B) by redesignating clause (ii) as clause (iii); and

(C) by inserting immediately after clause (i) the following new clause:

"(ii) For purposes of subsection (d) for discharges occurring during a fiscal year, the 'applicable percentage increase' shall be—

"(I) for fiscal year 1986, 0.5 percent,

"(II) for fiscal year 1987, 1.15 percent,

"(III) for fiscal year 1988, 0.5 percent in the case of hospitals paid at the urban rate and 3.7 percent in the case of hospitals paid at the rural rate,

"(IV) for fiscal year 1989, the market basket percentage increase (as defined in clause (iii)) minus 2 percentage points, "(V) for fiscal year 1990, the market basket percentage increase (as defined in such clause) minus 1.6 percentage points, and

"(VI) for fiscal year 1991 and subsequent fiscal years, the percentage determined by the Secretary pursuant to subsection (e)(4).".

(2)(A) Section 1886(d)(3)(A) of such Act (42 U.S.C. 1395ww(d)(3)(A)) is amended by striking "and 1988" and inserting in lieu thereof "1988, 1989, and 1990".

(B) Section 1886(e)(4) of such Act (42 U.S.C. 1395ww(e)(4)) is amended—

(i) by striking "fiscal year 1988" and inserting in lieu thereof "fiscal years 1988, 1989, and 1990"; and

(ii) by striking the last sentence and inserting in lieu thereof the following: "The percentage change may be different for urban subsection (d) hospitals, urban subsection (d) Puerto Rico hospitals, rural subsection (d) hospitals, rural subsection (d) Puerto Rico hospitals, and all other hospitals and units exempt from the prospective payment system, and may vary among such other hospitals and units.".

(3) The amendments made by paragraphs (1) and (2) shall apply to cost reporting periods beginning on or after October 1, 1987, excluding the first 51 days of the first such cost reporting period, and for purposes of section 1886(d) of the Social Security Act, for discharges occurring on or after January 1, 1988.

(4) Subsection (a)(1)(B)(ii) of section 107 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 is amended by inserting ", the target percentage and DRG percentage shall be those specified in subsection (d)(1)(c)(iv) of such section, and the applicable percentage increase shall be deemed to be 0 percent" before the end period.

(b) MEDICARE PAYMENTS TO SOLE COMMUNITY HOSPITALS.—

(1) Not later than 120 days after the date of the enactment of this Act, the Secretary shall issue, to agencies and organizations through which payments are made under part A of title XVIII of the Social Security Act, implementing instructions that set forth clearly and explicitly the manner in which a sole community hospital may apply for an adjustment of the type described in the second sentence of section 1886(d)(5)(C)(ii) of such Act and the factors that such a hospital is required to demonstrate in order to qualify for such an adjustment.

(2) Section 1886(d)(5)(C)(ii) (42 U.S.C. 1395ww(d)(5)(C)(ii)) is amended—

(A) by striking "1988" in the second sentence and inserting in lieu thereof "1990", and

(B) by inserting between the second and third sentences the following: "A subsection (d) hospital that meets the criteria for classification as a sole community hospital and otherwise qualifies for the adjustment authorized by the preceding sentence may qualify for such an adjustment without regard to the formula by which payments are determined for the hospital under paragraph (1)(A).".

(3)(A) The amendments made by paragraph (2) shall apply to cost reporting periods beginning on or after October 1, 1987.

(B) The Secretary of Health and Human Services shall take appropriate steps to ensure that the total amount paid in a fiscal year under title XVIII of the Social Security Act by reason of the amendment made by paragraph (2)(B) does not exceed—

(i) $10,000,000 in the case of fiscal year 1988; and

(ii) $12,000,000 in the case of fiscal year 1989.

(c) IMPACT ANALYSES OF MEDICARE AND MEDICAID RULES AND REGULATIONS ON SMALL RURAL HOSPITALS.—

(1) Section 1102 (42 U.S.C. 1302) is amended—

(A) by inserting "(a)" after "SEC. 1102.", and

(B) by adding at the end thereof the following new subsection:

"(b)(1) Whenever the Secretary publishes a general notice of proposed rulemaking for any rule or regulation proposed under title XVIII, title XIX, or part B of this title that may have a significant impact on a substantial number of small rural hospitals, the Secretary shall prepare and make available for public comment an initial regulatory impact analysis. Such analysis shall describe the impact of the proposed rule or regulation on such hospitals and shall set forth, with respect to small rural hospitals, the matters required under section 603 of title 5, United States Code, to be set forth with respect to small entities. The initial regulatory impact analysis (or a summary) shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

"(2) Whenever the Secretary promulgates a final version of a rule or regulation with respect to which an initial regulatory impact analysis is required by paragraph (1), the Secretary shall prepare a final regulatory impact analysis with respect to the final version of such rule or regulation. Such analysis shall set forth, with respect to small rural hospitals, the matters required under section 604 of title 5, United States Code, to be set forth with respect to small entities. The Secretary shall make copies of the final regulatory impact analysis available to the public and shall publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

"(3) If a regulatory flexibility analysis is required by chapter 6 of title 5, United States Code, for a rule or regulation to which this subsection applies, such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.".

(2) The amendments made by paragraph (1) shall apply to regulations proposed more than 30 days after the date of the enactment of this Act.

(d) HOSPITAL COST REPORT.—

(1)(A) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall develop a data base of the operating costs of inpatient hospital services for a representative sample of hospitals, for use by the Congress and the Secretary in determining an appropriate applicable percentage increase under section 1886(b)(3)(B) of the Social Security Act, evaluating the appropriateness of other payment adjustments under section 1886, and analyzing legislative, regulatory, and budgetary changes.

(B) In selecting a representative sample of hospitals for the data base required to be developed pursuant to subparagraph (A), the Secretary shall—

(i) select subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) with cost reporting periods beginning during the first four months of the fiscal year of the United States Government, and

(ii) to the extent practicable, provide for adequate representation of small rural hospitals, sole community hospitals, and rural referral centers.

(C) The Secretary shall report to the Congress on the data base developed pursuant to subparagraph (A) not later than October 1, 1988.

(2) The Secretary shall develop and place into effect not later than June 1, 1989, a data base of the operating costs of inpatient hospital services with respect to all hospitals under title XVIII of the Social Security Act, which data base shall be updated at least once every quarter (and maintained for the 12-month period preceding any such update). The data base under this subsection may include data from preliminary cost reports (but the Secretary shall make available an update analysis of the differences between preliminary and settled cost reports).

(3)(A) Subject to subparagraph (B), with respect to cost reporting periods beginning on or after October 1, 1989, the Secretary shall place into effect a standardized electronic cost reporting format.

(B) The Secretary may delay or waive the implementation of such format in particular instances where such implementation would result in financial hardship (in particular with respect to small or rural hospitals or any hospital with a small percentage of medicare volume).

(4) The Secretary shall consult representatives of the hospital industry in carrying out the provisions of this section.

(e) PROPAC REPORT ON STUDY OF SEPARATE DRG RATES FOR URBAN AND RURAL HOSPITALS.—The Prospective Payment Assessment Commission shall evaluate the study conducted by the Secretary of Health and Human Services pursuant to section 603(a)(2)(C)(i) of the Social Security Amendments of 1983 (relating to the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates) and report its conclusions and recommendations to the Congress not later than March 1, 1988.

(f) WAGE INDEX SURVEY.—Section 1886(d)(3)(E) (42 U.S.C. 1395ww(d)(3)(E)) of such Act is amended by adding at the end thereof the following: "Not later than October 1, 1989 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. To the extent determined feasible by the Secretary, such survey shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.".

(g) REVISION OF STANDARDS FOR INCLUDING A RURAL COUNTY IN AN URBAN AREA.—

(1) Section 1886(d)(8) of such Act (42 U.S.C. 1395ww(d)(8)) is amended—

(A) by redesignating clauses (i) and (ii) of subparagraphs (A) and (B) as subclauses (I) and (II), respectively,

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by inserting "(A)" after "(8)", and

(D) by adding at the end thereof the following new subparagraphs:

"(B) The Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute, if—

"(i) the rural county would otherwise be considered an urban area but for the fact that the rural county does not meet the standard relating to the rate of commutation between the rural county and the central county or counties of any one adjacent urban area; and

"(ii) either (I) the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area or areas is equal to at least 15 percent of the number of residents of the rural county who are employed, or (II) the sum of the number of residents of the rural county who commute for employment to the central county or counties of all adjacent urban areas and the number of residents of the central county or counties of all adjacent urban areas who commute for employment to the rural county is at least equal to 20 percent of the number of residents of the rural county who are employed.

"(C) The Secretary shall make a proportional adjustment in the standardized amount determined under section 1886(d)(3) for hospitals paid at the urban rate to assure that the provisions of subparagraph (B) do not result in aggregate payments under this section that are greater or less than the aggregate amount of payments that would have resulted in the absence of the provisions of subparagraph (B). For purposes of computing the wage indices under this section, hospitals to which subparagraph (B) applies shall be treated as rural hospitals.".

(2) The amendments made by paragraph (1) shall apply to discharges occurring on or after January 1, 1988.

(3) For purposes of section 1886 of the Social Security Act, Watertown Memorial Hospital in Watertown, Wisconsin, is deemed to be located in Jefferson County, Wisconsin.

(h) CLINIC HOSPITAL WAGE INDICES.—In calculating the wage index under section 1886(d) of the Social Security Act for purposes of making payment adjustments after December, 1986, as required under paragraphs (2)(H) and (3)(E) of such section, in the case of any institution described in section 602(k) of the Social Security Amendments of 1983, the Secretary of Health and Human Services shall include wage costs paid to related organization employees directly involved in the delivery and administration of care provided by the related organization to hospital inpatients. For purposes of the preceding sentence, the term 'wage costs' does not include costs of overhead or home office administrative salaries or any costs that are not incurred in the hospital's Standard Metropolitan Statistical Area.

(i) PSYCHOLOGISTS' SERVICES FURNISHED TO HOSPITAL INPATIENTS.—

(1) Section 1861(b)(3) of such Act (42 U.S.C. 1395x(b)(3)) is amended by inserting "(including a clinical psychologist (as defined by the Secretary))" after "others" the first place it appears.

(2) The amendment made by paragraph (1) shall apply with respect to services furnished on or after the date of enactment of this Act.

(j) HOSPITAL CONDITION OF PARTICIPATION RELATED TO INDIVIDUAL RESPONSIBLE FOR CARE OF PATIENT.—Section 1861(e)(4) of such Act (42 U.S.C. 1395x(e)(4)) is amended by inserting "with respect to whom payment may be made under this title" after "patient".

(k) OUTLIER PAYMENTS FOR BURN CASES.—

(1) The Prospective Payment Assessment Commission (in this subsection referred to as the "Commission") shall conduct a study of possible modifications to the prospective payment system established under section 1886(d) of the Social Security Act that will provide more adequate and appropriate payments with respect to burn outlier cases, including a recommendation with respect to whether separate payment rates should be established for burn center hospitals. The Commission shall report the results of the study to the Congress not later than April 1, 1988.

(2)(A) Section 1886(d)(5)(A)(iii) of such Act (42 U.S.C. 1395ww(d)(5)(A)(iii)) is amended—

(i) by inserting "(I)" after "(iii)", and

(ii) by adding at the end thereof the following new subclause:

"(II) In the case of any burn-related discharge described in clause (i) or (ii), the amount of the additional payment under such clause shall equal 90 percent of the cost of care beyond the applicable cutoff point.".

(B) Subclause (II) of section 1886(d)(5)(A)(iii) of such Act shall be implemented in a manner that ensures that total payments under section 1886 of such Act are not increased or decreased by reason of the adjustments required by such subclause.

(3) The amendments made by paragraph (1) shall apply to discharges occurring on or after January 1, 1988, and before October 1, 1989.

(l) CHANGING COST-EFFECTIVENESS PERFORMANCE PERIOD UNDER DEMONSTRATION PROJECT REIMBURSEMENT SYSTEM.—Section 1814(b)(3) of such Act (42 U.S.C. 1395f(b)(3)) is amended by striking "for the previous three-year period" and inserting in lieu thereof "for any period beginning on October 1, 1983, and ending on the most recent date for which relevant data are available".

(m) MAINTAINING METHOD OF REIMBURSING HOSPITALS FOR BAD DEBT UNDER PROSPECTIVE PAYMENT SYSTEM.—The Secretary of Health and Human Services shall continue and shall not issue regulations to alter the method for making payments to hospitals under title XVIII of the Social Security Act for the reasonable costs relating to unrecovered costs associated with unpaid deductible or coinsurance amounts for inpatient hospital services covered under part A of such title under policy guidelines (including criteria for what constitutes a reasonable collection effort) in effect on March 31, 1987.

(n) REPORT ON OUTLIER PAYMENTS.—The Secretary of Health and Human Services shall include in the annual report submitted to the Congress pursuant to section 1875(b) of the Social Security Act a comparison with respect to hospitals located in an urban area and hospitals located in a rural area in the amount of reductions under section 1886(d)(3)(B) of the Social Security Act and additional payments under section 1886(d)(5)(A) of such Act.

(o) CLASSIFICATION OF RURAL REFERRAL CENTERS.—

(1) Section 1886(d)(5)(C)(i)(I) of such Act (42 U.S.C. 1395ww(d)(5)(C)(i)(I)) is amended in the first sentence by striking "500" and inserting in lieu thereof "275".

(2) Section 1886(d)(5)(C)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(i)) is amended by adding at the end thereof the following new subclause:

"(III) The Secretary shall provide, under subclause (I), for the classification of a rural hospital as a regional referral center if the hospital has a case mix equal to or greater than both the median case mix for hospitals (other than hospitals with approved teaching programs) located in an urban area within the United States and the median case mix for hospitals (other than hospitals with approved teaching programs) located in an urban area in the same region (as defined in paragraph (2)(D)), meets the criterion established by the Secretary under subclause (I) with respect to the annual number of discharges for a rural osteopathic hospital, and meets any other criteria established by the Secretary under subclause (I). The Secretary shall implement the provisions of this subclause in a manner that ensures that total payments under this section are not increased or decreased by reason of the classifications required by such provisions.".

(3)(A) Subject to subparagraph (B), the amendments made by paragraphs (1) and (2) shall apply to payments for discharges occurring on or after January 1, 1988.

(B) An appeal for classification of a rural hospital as a regional referral center, pursuant to the amendments made by paragraphs (1) and (2), which is filed before April 1, 1988, and which is approved shall be effective with respect to discharges occurring on or after January 1, 1988, without regard to when the hospital's cost reporting period began.

(p) GRANT PROGRAM FOR RURAL HEALTH CARE TRANSITION.—

Title XVIII of the Social Security Act is amended by inserting after section 1884 the following new section:

"GRANTS TO RURAL HOSPITALS

"SEC. 1884A. (a) The Secretary shall establish a program of grants to assist eligible small rural hospitals and their communities in the planning and implementation of projects to modify the type and extent of services such hospitals provide in order to adjust for one or more of the following factors:

"(1) Changes in clinical practice patterns,

"(2) Changes in service populations,

"(3) Declining demand for acute-care inpatient hospital capacity,

"(4) Declining ability to provide appropriate staffing for inpatient hospitals,

"(5) Increasing demand for ambulatory and emergency services,

"(6) Increasing demand for appropriate integration of community health services, or

"(7) The need for adequate access (including appropriate transportation) to emergency care and inpatient care in areas in which a significant number of underutilized hospital beds are being eliminated.

The program shall be established through the Administrator of the Health Care Financing Administration and shall be conducted by the Administrator in consultation with the Assistant Secretary for Health (or a designee).

"(b) For purposes of this section, the term 'eligible small rural hospital' means any hospital that—

"(1) is located in a rural area (as determined in accordance with subsection (d)),

"(2) has less than 100 beds,

"(3) provides patient services (diagnostic and therapeutic) for a variety of medical conditions, and

"(4) is classified as a—

"(A) government-nonfederal,

"(B) nongovernment not-for-profit, or

"(C) church-operated as osteopathic or other not-for-profit osteopathic,

hospital under the classification codes of the American Hospital Association.

"(c)(1) Any eligible small rural hospital that desires to modify the type or extent of health care services that it provides in order to adjust for one or more of the factors specified in subsection (a) may submit an application to the Governor of the State in which it is located. The application shall specify the nature of the project proposed by the hospital, the data and information on which the project is based, and a timetable (of not more than twenty-four months) for completion of the project. The application shall be submitted on or before a date specified by the Secretary and shall be in such form as the Secretary may require.

"(2) The Governor shall transmit any application submitted pursuant to paragraph (1) to the Secretary not later than 30 days after it is received by the Governor, accompanied by any comments with respect to the application that the Governor deems appropriate.

"(3) The Governor of a State may designate an appropriate State agency to receive and comment on applications submitted under paragraph (1).

"(d) A hospital shall be considered to be located in a rural area for purposes of this section if it is treated as being located in a rural area for purposes of section 1886(d)(3)(D).

"(e) In determining which hospitals making application under subsection (c) will receive grants under this section, the Secretary shall take into account—

"(1) any comments received under subsection (c)(2) with respect to a proposed project;

"(2) the effect that the project will have on—

"(A) reducing expenditures from the Federal Hospital Insurance Trust Fund,

"(B) improving the access of medicare beneficiaries to health care of a reasonable quality;

"(3) the extent to which the proposal of the hospital, using appropriate data, demonstrates an understanding of—

"(A) the primary market or service area of the hospital, and

"(B) the health care needs of the elderly and disabled that are not currently being met by providers in such market or area, and

"(4) the degree of coordination that may be expected between the proposed project and—

"(A) other local or regional health care providers, and

"(B) community and government leaders,

as evidenced by the availability of support for the project (in cash or in kind) and other relevant factors.

"(f) A grant to a hospital under this section may not exceed $50,000 a year and may not exceed a term of two years.

"(g)(1) Except as provided in paragraphs (2) and (3), a hospital receiving a grant under this section may use the grant for any of expenses incurred in planning and implementing the project with respect to which the grant is made.

"(2) A hospital receiving a grant under this section for a project may not use the grant to retire debt incurred with respect to any capital expenditure made prior to the date on which the project is initiated.

"(3) Not more than one-third of any grant made under this section may be expended for capital-related costs (as defined by the Secretary for purposes of section 1886(a)(4)) of the project.

"(h)(1) A hospital receiving a grant under this section shall furnish the Secretary with such information as the Secretary may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

"(2) The Secretary shall report to the Congress at least once every six months on the program of grants established under this section. The report shall assess the functioning and status of the program, shall evaluate the progress made toward achieving the purposes of the program, and shall include any recommendations the Secretary may deem appropriate with respect to the program. In preparing the report, the Secretary shall solicit and include the comments and recommendations of private and public entities with an interest in rural health care.

"(3) The Secretary shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

"(i) The provisions of section 1122 shall not apply to capital expenditures made with respect to any project for which a grant is made under this section.

"(j) For purposes of carrying out the program of grants under this section, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $15,000,000 for each of the fiscal years 1989 and 1990.".

(q) DELAY IN REQUIREMENTS RELATING TO HOSPITAL STANDARDS FOR ORGAN TRANSPLANTS AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES.—

(1) Section 9318(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 107(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, is amended by striking "November 21, 1987" each place it appears and inserting in lieu thereof "December 31, 1988".

(2) The amendment made by paragraph (1) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4002. MEDICAL EDUCATION.

(a) INDIRECT MEDICAL EDUCATION.—

(1) Section 1886(d)(5)(B)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended—

(A) in subclause (I), by striking "2" and inserting in lieu thereof "1.56"; and

(B) in subclause (II), by striking "1.5" and inserting in lieu thereof "1.7", and by striking out ".5795" and inserting in lieu thereof ".405".

(2) Section 1886(d)(3)(C)(ii) of such Act (42 U.S.C. 1395ww(d)(3)(C)(ii)) is amended—

(A) in the heading, by striking "SEPTEMBER 30, 1986" and inserting in lieu thereof "DECEMBER 31, 1987";

(B) in the matter preceding subclause (I)—

(i) by striking "September 30, 1986" and inserting in lieu thereof "December 31, 1987",

(ii) by inserting "proportionately" after "reduce", and

(iii) by striking "(in" and all that follows through "(i))";

(C) in subclause (I)—

(i) by striking "October 1, 1986" and inserting in lieu thereof "December 31, 1987", and

(ii) by inserting "and by section 4002 of the Omnibus Budget Reconciliation Act of 1987" after "1985"; and

(D) in subclause (II), by inserting "and by section 4002 of the Omnibus Budget Reconciliation Act of 1987" after "1985".

(3) The amendments made by this subsection shall apply to discharges occurring on or after January 1, 1988.

(b) EXCLUSION OF COSTS INCURRED WITH RESPECT TO FOREIGN MEDICAL GRADUATES.—Section 1886(h)(4) of such Act (42 U.S.C. 1395ww(h)(4)) is amended by adding at the end thereof the following new subparagraph:

"(F) FOREIGN MEDICAL GRADUATE EXCLUSION.—

"(i) IN GENERAL.—Except as provided in clauses (ii), (iii), and (iv), such rules shall provide that, in the case of an individual who is a foreign medical graduate (as defined in paragraph (5)(D)), the individual shall not be counted as a resident with respect to any cost reporting period beginning on or after July 1, 1988.

"(ii) FIRST TRANSITIONAL RULE.—With respect to the first cost reporting period beginning on or after July 1, 1988, such rules shall provide that the lesser of—

"(I) two-thirds of the number of a hospital's residents for such cost reporting period who are foreign medical graduates but who began their formal training required for initial board eligibility in the specialty for which they are preparing prior to July 1, 1988, or

"(II) two-thirds of the number of residents who are foreign medical graduates but with respect to whom the hospital received payments under this subsection for the last cost reporting period beginning before July 1, 1988,

shall be counted as residents.

"(iii) SECOND TRANSITIONAL RULE.—With respect to the second cost reporting period beginning on or after July 1, 1988, such rules shall provide that the lesser of—

"(I) one-third of the number of a hospital's residents for such cost reporting period who are foreign medical graduates but who began their formal training required for initial board eligibility in the specialty for which they are preparing prior to July 1, 1988, or

"(II) one-third of the number of residents who are foreign medical graduates but with respect to whom the hospital received payments under this subsection for the last cost reporting period beginning before July 1, 1987,

shall be counted as residents.

"(iv) SPECIAL TRANSITIONAL RULE FOR HOSPITALS WITH HIGH PERCENTAGE OF FOREIGN MEDICAL GRADUATES.—In the case of a hospital at which, on September 1, 1987, more than 50 percent of the residents for which such hospital receives payments under this subsection are foreign medical graduates, such rules shall provide that the provisions of clause (ii) shall apply for the first 2 cost reporting periods beginning on or after July 1, 1988, and the provisions of clause (iii) shall apply to the subsequent 3 cost reporting periods.".

(c) RURAL HEALTH MEDICAL EDUCATION DEMONSTRATION PROJECT.—

(1) The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with four sponsoring hospitals submitting applications under this paragraph to conduct demonstration projects to assist resident physicians in developing field clinical experience in rural areas.

(2) Under a demonstration project conducted under paragraph (1), a sponsoring hospital entering into an agreement with the Secretary under such paragraph shall enter into arrangements with a small rural hospital to provide to such rural hospital, for a period of one to three months of training, physicians (in such number as the agreement under paragraph (1) may provide) who have completed one year of residency training.

(3) In selecting from among applications submitted under paragraph (1), the Secretary shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

(A) two of such hospitals are located in rural counties of more than 2,700 square miles (one of which is east of the Mississippi River and one of which is west of such river); and

(B) two of such hospitals are located in rural counties with (as determined by the Secretary) a severe shortage of physicians (one of which is east of the Mississippi River and one of which is west of such river).

(4) For purposes of section 1886 of the Social Security Act—

(A) with respect to subsection (d)(5)(B) of such section, any resident physician participating in the project under paragraph (1) for any part of a year shall be treated as if he or she were working at the appropriate sponsoring hospital with an agreement under paragraph (1) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

(B) with respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under paragraph (1) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under paragraph (1).

(5) Each demonstration project under paragraph (1) shall be commenced not later than six months after the date of enactment of this Act and shall be conducted for a period of three years.

(6) In this subsection, the term 'sponsoring hospital' means a hospital that receives payments under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act.

SEC. 4003. PAYMENTS FOR HOSPITAL CAPITAL-RELATED COSTS.

(a) In General.—Section 1886(g)(3)(A) of the Social Security Act (42 U.S.C. 1395ww(g)(3)(A)) is amended—

(1) by striking clause (ii) and inserting in lieu thereof the following new clause:

"(ii) 12 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) in fiscal year 1988 occurring on or after January 1, 1988, and to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989, and"; and

(2) in clause (iii), by striking "1989" and inserting in lieu thereof "1990".

(b) CLARIFICATION OF SECRETARIAL AUTHORITY TO INCORPORATE PAYMENT FOR OTHER CAPITAL-RELATED COSTS UNDER THE PROSPECTIVE PAYMENT SYSTEM.—Section 1886(a)(4) of such Act (42 U.S.C. 1395ww(a)(4)) is amended by striking "1987" and inserting in lieu thereof "1991".

(c) TREATMENT OF CAPITAL-RELATED REGULATIONS.—

(1) Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not change the definition of capital-related costs or change the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act. Any regulation published in violation of the previous sentence after August 1, 1987, and before the date of enactment of this Act is void and of no effect.

(2) Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4)).

(3) Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing subsections (g)(3)(A) and (g)(3)(B) of section 1886 of the Social Security Act (as amended by section 9303(a) of the Omnibus Budget Reconciliation Act of 1986 and subsection (a) of this section).

(4) In this subsection, the term "capital-related costs" means those capital-related costs that are specifically excluded, under the second sentence of section 1886(a)(4) of the Social Security Act, from "operating costs of inpatient hospital services" (as defined in that section) for cost reporting periods beginning prior to October 1, 1989.

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to portions of cost reporting periods or discharges occurring on or after January 1, 1988.

SEC. 4004. ELIMINATION OF PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR CERTAIN HOSPITALS AND EXTENSION OF DISPROPORTIONATE SHARE ADJUSTMENT.

(a) IN GENERAL.—Section 1815(e)(1) of the Social Security Act (42 U.S.C. 1395g(e)(1)) is amended—

(1) in subparagraph (B), by striking "In" and inserting in lieu thereof "Subject to the last sentence of this paragraph, in"; and

(2) by adding at the end thereof the following:

"No payment shall be made under subparagraph (B) on a periodic payment basis on or after July 1, 1990; except that, the Secretary may provide with respect to a hospital that payments be made on such basis under such subparagraph on or after such date (for such period of time as the Secretary determines is appropriate) if the hospital demonstrates to the satisfaction of the Secretary that discontinuing payments on such basis would pose an immediate threat to the ability of the hospital to operate.".

(b) Temporary Delay in Payments in Fiscal Year 1989.—Notwithstanding section 1815(a) of the Social Security Act, in the case of a hospital which is paid periodic interim payments under section 1815(e)(1)(B) of such Act, the Secretary of Health and Human Services shall provide with respect to at least the last twenty-one days for which such payments would be made during fiscal year 1989, that such payments shall be deferred until fiscal year 1990.

(c) For the purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, this section is a necessary (but secondary) result of a significant policy change.

(d) Extension of Disproportionate Share Adjustment.—Sections 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)), 1886(d)(3)(C)(ii)(I) (42 U.S.C. 1395ww(d)(3)(C)(ii)(I)), 1886(d)(3)(C)(ii)(II) (42 U.S.C. 1395ww(d)(3)(C)(ii)(II)), 1886(d)(5)(B)(ii)(I) (42 U.S.C. 1395ww(d)(5)(B)(ii)(I)), 1886(d)(5)(B)(ii)(II) (42 U.S.C. 1395ww(d)(5)(B)(ii)(II)), and 1886(d)(5)(F)(i) (42 U.S.C. 1395ww(d)(5)(F)(i)) of the Social Security Act are each amended by striking "1989" and inserting in lieu thereof "1990".

Subpart II—Provisions Affecting Medicare Parts A and B

SEC. 4011. PAYMENT CYCLE STANDARDS.

(a) Payment Floor Standards.—

(1) Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) Each agreement under this section shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this title within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph, the term 'applicable number of calendar days' means—

"(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days,

"(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 11 days, and

"(iii) with respect to claims received in the 12-month period beginning October 1, 1989, 12 days.".

(2) Section 1842(c) of such Act (42 U.S.C. 1395u(c)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this title within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph, the term 'applicable number of calendar days' means—

"(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days,

"(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 11 days, and

"(iii) with respect to claims received in the 12-month period beginning October 1, 1989, 12 days.".

(3)(A) The amendments made by paragraphs (1) and (2) shall apply to claims received on or after July 1, 1988.

(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this subsection on a timely basis.

(b) PROMPT PAYMENT FOR COMPREHENSIVE OUTPATIENT REHABILITATION FACILITIES.—

(1) Section 1816(c)(2)(C) of such Act (42 U.S.C. 1395h(c)(2)(C)) is amended by striking "or hospice program" and inserting in lieu thereof "hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency".

(2)(A) The amendment made by paragraph (1) shall apply to claims received on or after the date of enactment of this Act.

(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816, and regulations, to such extent as may be necessary to implement the amendment made by paragraph (1).

(c) BUDGET CONSIDERATIONS.—For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, this section is a necessary (but secondary) result of a significant policy change.

SEC. 4012. MEDICARE CONTRACTORS.

(a) MEDICARE CONTRACTOR BUDGET.—

(1) Section 1816(c)(1) of the Social Security Act (42 U.S.C. 1395h(c)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for fiscal intermediaries under this section for that fiscal year.".

(2) Section 1842(c)(1) of such Act (42 U.S.C. 1395u(c)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for carriers under this section for that fiscal year.".

(3) The amendments made by paragraphs (1) and (2) shall become effective on the date of enactment of this Act and shall

apply to budgets for fiscal years beginning with fiscal year 1989.

(b) PAYMENT SAFEGUARDS.—

(1) Section 118 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 355), as amended by section 9216(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by striking "and $105,000,000 for each of fiscal years 1986, 1987, and 1988" and inserting in lieu thereof "$105,000,000 for each of fiscal years 1986 and 1987, $205,000,000 for fiscal year 1988, and $100,000,000 for each of fiscal years 1989 and 1990".

(2) The amendment made by paragraph (1) shall apply with respect to fiscal years beginning with fiscal year 1988.

(c) PROHIBITION AGAINST DENIAL QUOTAS.—

(1) Section 1816(f) of such Act (42 U.S.C. 1395h(f)) is amended in the second sentence by inserting "or solely on the basis of any specified numerical ratio of amounts that must be saved through denial of claims under utilization review to amounts expended with respect to such review" before the period.

(2) Section 1842(b)(2) of such Act (42 U.S.C. 1395u(b)(2)) is amended by inserting at the end thereof the following: "No carrier shall be found under such standards and criteria not to be efficient or effective or to be less efficient or effective solely on the basis of any specified numerical ratio of amounts that must be saved through denial of claims under utilization review to amounts expended with respect to such review.".

(3) Nothing in the amendments made by paragraphs (1) and (2) shall be construed to limit the authority of the Secretary of Health and Human Services under the law in effect on the date of enactment of this Act to—

(A) ascertain the accuracy of decisions (including medical review decisions) made by a fiscal intermediary under section 1816 of the Social Security Act or a carrier under section 1842 of such Act;

(B) prescribe standards for measuring the performance of any such fiscal intermediary or carrier; or

(C) refuse to renew (or to conditionally renew) the agreement of any such fiscal intermediary or the contract of any such carrier for failing to meet such standards.

SEC. 4013. SECONDARY PAYER PROVISIONS.

(a) APPLICATION OF SECONDARY PAYER PROVISIONS TO GOVERNMENTAL ENTITIES.—

(1) Section 1862(b)(4)(B)(i) of the Social Security Act (42 U.S.C. 1395y(b)(4)(B)(i)) is amended by striking "section 5000(b) of the Internal Revenue Code of 1986" and inserting in lieu thereof "subsection (b) of section 5000 of the Internal Revenue Code of 1986 without regard to subsection (d) of such section".

(2) The amendment made by paragraph (1) shall apply to items and services furnished on or after January 1, 1987.

(b) PRIMARY PAYER REQUIREMENT WITH RESPECT TO END STAGE RENAL DISEASE.—

(1) Section 1862(b)(2)(A) of such Act (42 U.S.C. 1395y(b)(2)(A)) is amended by striking "(ii)" and all that follows through the

period and inserting in lieu thereof "(ii) can reasonably be expected to be made under such plan.".

(2) The amendment made by paragraph (1) shall apply to items and services furnished on or after the date of enactment of this Act.

SEC. 4014. EXTENSION OF REDUCTIONS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through—

(1) December 31, 1987, with respect to all such payments; and

(2) January 15, 1987, with respect to payments for physicians' services and durable medical equipment (and other nonphysician services reimbursed on a reasonable charge basis) under part B of such title.

Subpart III—Provisions Affecting Medicare Part B

SEC. 4021. PHYSICIAN PAYMENTS.

(a) THREE-MONTH FREEZE ON INCREASES IN PHYSICIAN PAYMENTS.—

(1) Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended—

(A) in subsection (b)(4)—

(i) in subparagraph (A), by adding at the end thereof the following new clause:

"(vi) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning January 1, 1987.",

(ii) in subparagraph (B), by adding at the end thereof the following new clause:

"(iii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987.",

(iii) by adding at the end thereof the following new subparagraph:

"(F) For purposes of this part, with respect to physicians' services furnished in 1988 on or after April 1, the percentage increase in the MEI is—

"(i) the full amount of the percentage increase in the MEI for 1988 for primary services (as defined in subparagraph (E)(iii)), and

"(ii) 0 percent for other physicians' services.",

(iv) in subparagraph (E), by adding at the end thereof the following new clause:

"(iii) The term 'primary care services' means physicians' services which constitute office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services (as defined by procedure code by the Secretary)."; and

(B) in subsection (j)(1)(C), by adding at the end thereof the following new clause:

"(vii) Notwithstanding any other provision of this subparagraph, the maximum allowable actual charge for a particular physicians' service furnished by a nonparticipating physician to individuals enrolled under this part during the 3-month period beginning on January 1, 1988, shall be the amount determined under this subparagraph for 1987. The maximum allowable actual charge for any such service otherwise determined under this subparagraph for 1988 shall take effect on April 1, 1988.".

(2) Notwithstanding any other provision of law—

(A) subject to the last sentence of this paragraph, each agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall remain in effect for the three-month period beginning on January 1, 1988; and

(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988, and the Secretary shall provide an opportunity for physicians to enroll as participating physicians prior to April 1, 1988.

An agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician requests that the agreement be terminated.

(3) Section 9332(a)(4)(C) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(A) by striking "April" and inserting in lieu thereof "July"; and

(B) by striking "at the end of 1987" and inserting in lieu thereof "prior to April 1, 1988".

(b) PAYMENT INCREASE FOR SERVICES FURNISHED IN UNDERSERVED RURAL AREAS.—

(1) Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end thereof the following new subsection:

"(m) In the case of services furnished—

"(1) on an assignment-related basis,

"(2) to an individual who is covered under the insurance program established by this part and who incurs expenses for such services,

"(3) by a physician in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332 of the Public Health Service Act, as a health manpower shortage area,

in addition to the amount otherwise paid under this part, there also shall be paid to the physician (on a monthly or quarterly basis) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 5 percent of such amount.".

(2) The amendment made by paragraph (1) shall apply with respect to services furnished on or after January 1, 1989.

(c) CUSTOMARY CHARGES FOR NEW PHYSICIANS.—

(1) Section 1842(b)(4) of such Act, as amended by subsection (a)(1), is further amended by adding at the end thereof the following new subparagraph:

"(G) In determining the customary charges for physicians' services (other than services furnished in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332 of the Public Health Service Act, as a health manpower shortage area) for which adequate data are not available because a physician has not yet been in practice for a sufficient period of time, the Secretary shall set a customary charge at a level no higher than 80 percent of the prevailing charge (as determined under the third and fourth sentences of paragraph (3)) for a service.".

(2) The amendment made by paragraph (1) shall apply to physicians who first furnish services to medicare beneficiaries after January 1, 1988.

(d) REDUCTION IN PREVAILING CHARGE LEVEL FOR OVERPRICED PROCEDURES.—

(1) Section 1842(b) of such Act (42 U.S.C. 1395u(b)) is amended by adding at the end thereof the following new paragraph:

"(13)(A)(i) In determining the reasonable charge under paragraph (3) for any of the procedures described in subparagraph (C), the prevailing charge for any such procedure otherwise recognized for participating and nonparticipating physicians shall be reduced by the applicable percentage with respect to procedures performed in 1988. A reduced prevailing charge under this subparagraph shall become the prevailing charge level for purposes of applying the economic index under the fourth sentence of paragraph (3) for subsequent years.

"(ii) The applicable percentage specified in this clause is—

"(I) in the case of a prevailing charge that is at least 150 percent of the weighted national average (as determined by the Secretary) of such prevailing charges for such procedure for all localities in the United States for 1987, 15 percent;

"(II) in the case of a prevailing charge that does not exceed 100 percent of such average, 0 percent; and

"(III) in the case of any other prevailing charge, a percentage between 0 and 15 determined on the basis of a straight-line sliding scale (as determined by the Secretary).

"(C) The procedures described in this subparagraph are cataract extraction with intraocular lens implant, intraocular lens insertion, coronary artery bypass surgery, total hip replacement, suprapubic prostatectomy, transurethral resection of the prostate, diagnostic dilation and curettage, pacemaker surgery, and carpal tunnel release.

"(D)(i) In the case of a reduction in the reasonable charge for a physician's service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of such reduction (subject to clause (iv)), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 9-month period beginning on April 1, 1988), ½ of the amount by which the physician's maximum allowable actual charge for the service for the 12-month period ending on December 31, 1987, exceeds the limiting charge.

"(ii) In clause (i), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction under subparagraph (A).

"(iii) If a physician knowingly and willfully imposes a charge in violation of clause (i), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(iv) This subparagraph shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one year after the date the Secretary reports to the Congress, under section 1845(e)(3), on the development of a relative value scale under section 1845.".

(2) The amendments made by paragraph (1) shall apply to procedures performed on or after April 1, 1988.

(e) CHANGES IN APPLICATION OF MAXIMUM ALLOWABLE ACTUAL CHARGE.—

(1) In the case of a physician who did not have actual charges under title XVIII of the Social Security Act for a procedure in the calendar quarter beginning on April 1, 1984, but who establishes to the satisfaction of the carrier that he had actual charges (whether under title XVIII of such Act or otherwise) for the procedure performed during any calendar quarter beginning during the 12-month period ending March 31, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act for such procedure performed by such physician in 1988 based on the physician's actual charges for the procedure for the most recent calendar quarter (to begin during such period) for which the physician has actual charges.

(2) To the extent feasible, for the purpose of determining whether a uniform maximum allowable actual charge under section 1842(j) of the Social Security Act may be applied to a group practice—

(A) in the case of a multi-specialty group practice, in order to qualify for a group MAAC the charges must be uniform within each specialty, but to not necessarily have to be uniform across specialties; and

(B) in the case of hospital departmental practice plans, each department shall be treated separately.

(3) Paragraphs (1) and (2) shall take effect on April 1, 1988.

(f) DATE FOR APPLYING CIVIL PENALITIES FOR IMPROPER USE OF ASSISTANTS IN PERFORMING CATARACT SURGERY.—

(1) Section 1842(k) of such Act (42 U.S.C. 1395u(k)) is amended in paragraphs (1) and (2) by striking "(j)(2)" each place it appears and inserting in lieu thereof "(j)(2) in the case of surgery performed on or after March 1, 1987".

(2) The amendment made by paragraph (1) shall be effective as if included in section 9307(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(g) ASSISTANTS AT CATARACT SURGERY.—

(1) Section 1862(a)(15) of such Act (42 U.S.C. 1395y(a)(15)) is amended—

(A) by striking "the" the second place it appears and inserting in lieu thereof "(A) the"; and

(B) by striking the semicolon and inserting in lieu thereof the following: ", or (B) such organization and the appropriate carrier under such section have determined that the use of the assistant is necessary to perform a surgical technique of established economic benefit (taking into account the cost of the assistant) that eliminates the need for an anesthesiologist or nurse anesthetist;".

(2) The amendment made by paragraph (1) shall apply with respect to services furnished on or after the date of enactment of this Act.

(h) UTILIZATION SCREENS FOR PHYSICIAN SERVICES PROVIDED TO PATIENTS IN REHABILITATION HOSPITALS.—

(1) The Secretary of Health and Human Services shall establish (in consultation with appropriate physician groups, including those representing rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitation hospitals and rehabilitative units (and patients in long-term care hospitals receiving rehabilitation services) to be used by carriers under section 1842 of the Social Security Act in performing functions under subsection (a) of such section related to the utilization practices of physicians in such hospitals and units.

(2) Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall take appropriate steps to implement the utilization screen established under paragraph (1).

(i) COLLECTION OF PAST-DUE AMOUNTS OWED BY PHYSICIANS WHO BREACHED CONTRACTS UNDER THE NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM.—

(1)(A) Title XVIII of such Act is amended by adding at the end thereof the following new section:

"OFFSET OF PAYMENTS TO PHYSICIANS TO COLLECT PAST-DUE OBLIGATIONS ARISING FROM BREACH OF SCHOLARSHIP CONTRACT

"SEC. 1891. (a) IN GENERAL.—

"(1) The Secretary shall enter into an agreement under this section with any physician who, by reason of a breach of a contract entered into by such physician pursuant to the National Health Service Corps Scholarship Program, owes a past-due obligation to the United States (as defined in subsection (b)).

"(2) The agreement under this section shall provide that—

"(A) deductions shall be made from the amounts otherwise payable to the physician under this title or under a State plan approved under title XIX, in accordance with a formula and schedule agreed to by the Secretary and the physician, until such past-due obligation (and accrued interest) have been repaid;

"(B) payment under this title for services provided by such physician shall be made only on an assignment-related basis; and

"(C) if the physician does not provide services, for which payment would otherwise be made under this title or a State plan approved under title XIX, of a sufficient quantity to maintain the offset collection according to the agreed upon formula and schedule, or if the physician refuses to enter into an agreement or breaches any provision of the agreement—

"(i) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

"(ii) subject to paragraph (3), the Secretary shall immediately bar the physician from the program under this title and from any State program of medical assistance under title XIX of this Act, until such time as the entire past-due obligation has been repaid.

"(3) The Secretary shall not bar a physician pursuant to paragraph (2)(C)(ii) if such physician is a sole community physician or sole source of essential specialized services in a community.

"(b) PAST-DUE OBLIGATION.—For purposes of this section, a past-due obligation is any amount—

"(1) owed by a physician to the United States by reason of a breach of a scholarship contract under section 338D of the Public Health Service Act, and

"(2) which has not been paid by the deadline established by the Secretary pursuant to section 338D of the Public Health Service Act, and has not been canceled, waived, or suspended by the Secretary pursuant to such section.

"(c) COLLECTION UNDER THIS SECTION SHALL NOT BE EXCLUSIVE.—This section shall not preclude the United States from applying other provisions of law otherwise applicable to the collection of obligations owed to the United States, including (but not limited to) the use of tax refund offsets pursuant to section 3720A of title 31, United States Code, and the application of other procedures provided under chapter 37 of title 31, United States Code.

"(d) COLLECTION FROM PROVIDERS AND HEALTH MAINTENANCE ORGANIZATIONS.—

"(1) In the case of a physician who owes a past-due obligation, and who is an employee of a provider having an agreement under section 1866 or a health maintenance organization or competitive medical plan having a contract under section 1876, the Secretary shall deduct the amount of such past-due obligation from amounts otherwise payable under this title to such provider, organization, or plan.

"(2) Such deduction shall not be made until 6 months after the Secretary notifies the provider, organization, or plan of the amount to be deducted and the particular physicians to whom the deductions are attributable.

"(3) A deduction made under this subsection shall relieve the physician of the obligation (to the extent of the amount collected) to the United States, but the provider, organization, or plan shall have a right of action to collect from such physician the amount deducted pursuant to this subsection (including accumulated interest).

"(4) No deduction shall be made under this subsection if, within the 6-month period after notice is given to the provider, organization, or plan, the physician pays the past-due obligation, or ceases to be employed by the provider, organization, or plan.

"(5) The Secretary shall also apply the provisions of this subsection in the case of a physician who is a member of a group practice, if such group practice submits bills under this program as a group, rather than by individual physicians.

"(e) Notification to and Agreement with State Medicaid Agencies.—The Secretary shall notify each State agency which administers a State plan approved under title XIX of the name of each physician who owes a past-due obligation. If such physician receives any payments, or is employed by an entity which receives any payments, under a State plan, the Secretary shall enter into an agreement with such State under which amounts otherwise payable under the State plan to such physician or the employing entity will be deducted in accordance with the formula and schedule agreed to under subsection (a), or as provided in subsection (d). Deductions made by the State shall be made only from the Federal share of the amount otherwise payable to the physician or employing entity, and the amount otherwise payable to the State under section 1903 shall be reduced accordingly pursuant to section 1903(c).

"(f) Transfer From Trust Funds.—Amounts equal to the amounts deducted pursuant to this section shall be transferred from the Trust Fund from which the payment to the physician, provider, or other entity would otherwise have been made, to the general fund in the Treasury, and shall be credited as payment of the past-due obligation of the physician from whom (or with respect to whom) the deduction was made.".

(B) The amendment made by subparagraph (A) shall become effective on the date of the enactment of this Act.

(2)(A) Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(i) by striking out "and" at the end of paragraph (46);

(ii) by striking out the period at the end of paragraph (47) added by section 9407(a) of the Omnibus Budget Reconciliation Act of 1986 and inserting a semicolon and transferring and inserting such paragraph after paragraph (46);

(iii) by striking the period at the end of the paragraph (47) added by section 11005(b) of the Anti-Drug Abuse Act of 1986 and inserting "; and", by redesignating such paragraph as paragraph (48), and by transferring and inserting such paragraph after paragraph (47); and

(iv) by inserting after paragraph (48) the following new paragraph:

"(49) provide that the State shall make deductions, as specified by the Secretary pursuant to section 1891(e), from the Federal share of amounts otherwise payable to physicians for services furnished under the State plan.".

(B) Section 1903 of such Act (42 U.S.C. 1396b) is amended by inserting after subsection (b) the following new subsection:

"(c) The amount otherwise payable under subsection (a) to a State shall be reduced by the amount of any reductions in payments to physicians made by the State pursuant to section 1902(a)(49). An amount equal to the amount of the reduction in payment under this subsection shall be credited by the Secretary as repayment of past-due obligations under section 338D of the Public Health Service Act by the physicians from whom, or with respect to whom, the payments were offset.".

(C)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to calendar quarters beginning after the date of the enactment of this Act.

(ii) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this paragraph, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(3)(A) Section 338D(b)(1) of the Public Health Service Act (42 U.S.C. 254o(b)(1)) is amended by adding at the end thereof the following new sentence: "Amounts not paid within such period shall be subject to collection through deductions in Medicare and Medicaid payments pursuant to section 1891 and 1902(a)(49) of the Social Security Act.".

(B) Section 338D(c)(3) of such Act (42 U.S.C. 254o(c)(3)) is amended to read as follows:

"(3) Any obligation of an individual under the Scholarship Program (or a contract thereunder) for payment of damages may not be released by a discharge in bankruptcy under title 11 of the United States Code.".

(C)(i) The amendment made by subparagraph (A) shall become effective on the date of the enactment of this Act.

(ii) The amendment made by subparagraph (B) shall apply with respect to damages arising from contracts entered into after the date of the enactment of this Act.

(j) STUDY OF PREVAILING CHARGES FOR ANESTHESIA SERVICES.—The Secretary of Health and Human Services shall conduct a study of the variations in conversion factors used by carriers under section 1842(b) of the Social Security Act to determine the prevailing charge for anesthesia services and shall report the results of the study and make recommendations for appropriate adjustments in such factors not later than January 1, 1989.

(k) CHANGE IN DATE FOR ANNUAL REPORT OF PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) Section 1845(b)(1) of such Act (42 U.S.C. 1395w-1(b)(1)) is amended by striking "March" and inserting in lieu thereof "May".

(2) The amendment made by paragraph (1) shall apply with respect to reports for years after 1987.

SEC. 4022. PAYMENTS TO HOSPITAL OUTPATIENT DEPARTMENTS FOR RADIOLOGY.

(a) AMOUNTS PAYABLE.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended—

(1) in subsection (a)(2)—

(A) by striking "and" in subparagraph (C),

(B) by adding "and" at the end of subparagraph (D), and

(C) by adding at the end thereof the following new subparagraph:

"(E) with respect to outpatient hospital radiology services (including diagnostic and therapeutic radiology, nuclear medicine and CAT scan procedures), the amount determined under subsection (m);"; and

(2) by adding at the end thereof the following new subsection:

"(m)(1)(A) The aggregate amount of the payments to be made in a cost reporting period under this part for services described in subsection (a)(2)(E) shall be equal to the sum of:

"(i) the lesser of—

"(I) the amount determined with respect to such services under subsection (a)(2)(B) excluding amounts for capital associated with services described in subsection (a)(2)(E) or

"(II) the blend amount for radiology services determined in accordance with subparagraph (B); and

"(ii) amounts for capital associated with services described in subsection (a)(2)(E).

"(B)(i) The blend amount for radiology services for a cost reporting period is the sum of:

"(I) the cost proportion (as defined in clause (ii)(I)) of the amount described in subparagraph (A)(i)(I); and

"(II) the charge proportion (as defined in clause (ii)(II)) of 62 percent of 80 percent of the prevailing charge for participating physicians for the same radiology services as if they were furnished in a physician's office in the same locality as determined under section 1842(b).

"(ii) In this subparagraph:

"(I) The term 'cost proportion' means 65 percent for cost reporting periods beginning in fiscal year 1989 and 50 percent for other cost reporting periods.

"(II) The term 'charge proportion' means 35 percent for cost reporting periods beginning in fiscal year 1989 and 50 percent for other cost reporting periods.".

(b) CONFORMING AMENDMENT.—Section 1833(a)(2)(B) of such Act (42 U.S.C. 1395l(a)(2)(B)) is amended in the matter preceding clause (i) by striking "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to cost reporting periods beginning on or after October 1, 1988.

SEC. 4023. PART B PREMIUM.

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (e), by striking "1989" each place it appears and inserting in lieu thereof "1990";

(2) in subsection (f)(1), by striking "or 1987" and inserting in lieu thereof "1987, or 1988"; and

(3) in subsection (f)(2), by striking "or 1988" and inserting in lieu thereof "1988, or 1989".

SEC. 4024. COVERAGE OF MENTAL HEALTH SERVICES.

(a) OUTPATIENT SERVICES UNDER PART B.—Section 1833(c) of the Social Security Act (42 U.S.C. 1395l(c)) is amended—

(1) by striking "$312.50" and inserting in lieu thereof "$1375.00"; and

(2) by adding at the end thereof the following:

"For purposes of this subsection, the term 'treatment' does not include brief office visits (as defined by the Secretary) for the sole purpose of prescribing or monitoring prescription drugs used in the treatment of such disorders.".

(b) PARTIAL HOSPITALIZATION COVERAGE.—

(1) Section 1861(s)(2)(B) of such Act (42 U.S.C. 1395x(s)(2)(B)) is amended by inserting "and partial hospitalization services incident to such services" before the semicolon.

(2) Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"(ff)(1) The term 'partial hospitalization services' means the items and services described in paragraph (2) prescribed by a physician and provided under a program described in paragraph (3) under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such program), which plan sets forth the physician's diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan.

"(2) The items and services described in this paragraph are—

"(A) individual and group therapy with physicians or psychologists (or other mental health professionals to the extent authorized under State law),

"(B) occupational therapy requiring the skills of a qualified occupational therapist,

"(C) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients,

"(D) drugs and biologicals furnished for therapeutic purposes (which cannot, as determined in accordance with regulations, be self-administered),

"(E) individualized activity therapies that are not primarily recreational or diversionary,

"(F) family counseling (the primary purpose of which is treatment of the individual's condition), "(G) patient training and education (to the extent that training and educational activities are closely and clearly related to individual's care and treatment),

"(H) diagnostic services, and

"(I) such other items and services as the Secretary may provide (but in no event to include meals and transportation);

that are reasonable and necessary for the diagnosis or active treatment of the individual's condition, reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization, and furnished pursuant to such guidelines relating to frequency and duration of services as the Secretary shall by regulation establish (taking into account accepted norms of medical practice and the reasonable expectation of patient improvement).

"(3) A program described in this paragraph is a hospital-based or hospital-affiliated program which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour-daily care.".

(3) Section 1835(a)(2) of such Act (42 U.S.C. 1395n(a)(2)) is amended—

(A) by striking "and" at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(C) by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of partial hospitalization services, (i) the individual would require inpatient psychiatric care in the absence of such services, (ii) an individualized, written plan for furnishing such services has been established by a physician and is reviewed periodically by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.".

(4) Section 1833(c) of such Act, as amended by subsection (a), is further amended at the end thereof by inserting "or partial hospitalization services that are not directly provided by a physician" before the period.

(c) Effective Date; Implementation.—

(1) The amendments made by subsection (a) shall apply with respect to calendar years beginning on or after January 1, 1988.

(2)(A) The amendments made by subsection (b) shall become effective on the date of enactment of this Act.

(B) The Secretary of Health and Human Services shall implement the amendments made by subsection (b) so as to ensure that there is no additional cost to the medicare program by reason of such amendments.

SEC. ~~4025~~. RETURN ON EQUITY PAYMENTS TO OUTPATIENT DEPARTMENTS.

(a) In General.—Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end thereof the following new subparagraph:

"(S) Such regulations shall not include provision for specific recognition of any return on equity capital with respect to hospital outpatient departments.".

(b) CONFORMING AMENDMENT.—Section 1881(b)(2)(C) of the Social Security Act (42 U.S.C. 1395rr(b)(2)(C)) is amended by striking "facilities" and inserting in lieu thereof "facilities (other than hospital outpatient departments)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on January 1, 1988.

SEC. 4026. UPDATING MAXIMUM RATE OF PAYMENT PER VISIT FOR INDEPENDENT RURAL HEALTH CLINICS.

(a) IN GENERAL.—

(1) Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by inserting after subsection (e) the following new subsection:

"(f) With respect to any year after 1988, in establishing a limit under subsection (a)(3) on payment for rural health clinic services provided by independent rural health clinics, the Secretary shall adjust the limit established under this subsection for the previous year increased by the percentage increase in an index developed by the Secretary that takes into account economic data and the actual costs of furnishing rural health clinic services.".

(2) Section 1833 of such Act, as added by paragraph (1), is amended—

(A) by inserting "(1)" after "(f)"; and

(B) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any other provision of this section, such limit in 1988 shall be $46.".

(b) CONTINGENT EFFECTIVE DATE.—

(1) Subject to paragraph (2), the amendment made by subsection (a) shall become effective 120 days after the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall not become effective if (and shall be null and void) the Secretary of Health and Human Services, prior to the date described in paragraph (1), updates the payment limit under title XVIII of the Social Security Act for services with respect to which such amendment applies to account for increases in practice costs occurring since the date on which such limit was last changed.

SEC. 4027. COVERAGE OF CERTIFIED NURSE-MIDWIFE SERVICES UNDER PART B OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (J);

(2) by adding "and" at the end of subparagraph (K); and

(3) by adding at the end thereof the following new subparagraph:

"(L) certified nurse-midwife services;".

(b) PAYMENT OF BENEFITS.—

(1) Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) by striking "and" at the end of clause (ii);

(B) by striking the semicolon at the end of clause (iii) and inserting in lieu thereof a comma; and

(C) by adding at the end thereof the following new clause:

"(iv) certified nurse-midwife services; and".

(2) Section 1833(a)(1) of such Act (42 U.S.C. 1395k(a)(1)) is amended--

(A) by striking "and" at the end of subparagraph (F);

(B) by striking "services; and" in subparagraph (G) and inserting in lieu thereof "services,";

(C) by adding "and" at the end of subparagraph (H); and

(D) by adding at the end thereof the following new subparagraph: "(I) with respect to certified nurse-midwife services under section 1861(s)(2)(L), the amounts paid shall be the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph (but in no event more than 75 percent of the prevailing charge that would be allowed for the same service performed by a physician);".

(c) Definition.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"Certified Nurse-Midwife Services

"(ff)(1) The term 'certified nurse-midwife services' means services furnished by a certified nurse-midwife (as defined in paragraph (2)) which the certified nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.

"(2) The term 'certified nurse-midwife' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies throughout the maternity cycle.".

(c) Conforming Changes.—

(1) Section 1905(a)(17) of such Act (42 U.S.C. 1396d(a)(17)) is amended by striking "as defined in subsection (m)" and inserting in lieu thereof "as defined in section 1861(ff)".

(2) Section 1905 of such Act (42 U.S.C. 1396d) is amended by striking subsection (m).

(d) Effective Date.—The amendments made by this section shall be effective with respect to services performed on or after July 1, 1988.

SEC. 4028. PSYCHOLOGIST SERVICES IN CLINICS.

(a) Coverage of Psychologists' Services Furnished at Rural Health Clinics.—

(1) Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by striking "physician assistant or by a nurse practitioner" and inserting in lieu thereof "physi-

cian assistant or a nurse practitioner (as defined in paragraph (3)), or by a clinical psychologist (as defined by the Secretary),".

(2) The amendment made by paragraph (1) shall be effective with respect to services furnished on or after the date of enactment of this Act.

(b) Direct Payment for Psychologists' Services Furnished at a Community Mental Health Center.—

(1) Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) by striking "and" at the end of subparagraph (J);

(B) by adding "and" at the end of subparagraph (K); and

(C) by adding at the end thereof the following new subparagraph:

"(L) qualified psychologist services;".

(2) Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) by striking "and" at the end of clause (ii);

(B) by striking the semicolon in clause (iii) and inserting in lieu thereof a comma; and

(C) by adding at the end thereof the following new clause:

"(iv) qualified psychologist services; and".

(3) Section 1833(a)(1) of such Act (42 U.S.C. 1395k(a)(1)) is amended—

(A) by striking "and" at the end of subparagraph (F);

(B) by striking "services; and" in subparagraph (G) and inserting in lieu thereof "services,";

(C) by adding "and" at the end of subparagraph (H); and

(D) by adding at the end thereof the following new subparagraph: "(I) with respect to qualified psychologist services under section 1861(s)(2)(L), the amounts paid shall be the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph;".

(4) Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"Qualified Psychologist Services

"(ff) The term 'qualified psychologist services' means services furnished by a clinical psychologist (as defined by the Secretary) at a community mental health center (as such term is used in the Public Health Service Act) which the psychologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law).

(5) The amendments made by this subsection shall be effective with respect to services performed on or after January 1, 1988.

SEC. 4029. PAYMENT FOR THERAPEUTIC SHOES FOR INDIVIDUALS WITH SEVERE DIABETIC FOOT DISEASE.

(a) Coverage Under Part B.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is amended—

(1) by redesignating paragraphs (12) through (15) as paragraphs (13) through (16), respectively,

(2) by striking out "and" at the end of paragraph (10),

(3) by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and

(4) by inserting after paragraph (11) the following new paragraph:

"(12) extra-depth shoes with inserts or custom molded shoes for an individual with diabetes, if—

"(A) the physician who is managing the individual's diabetic condition (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such shoes under a comprehensive plan of care related to the individual's diabetic condition;

"(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and

"(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary) who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area).".

(b) LIMITATION ON BENEFIT.—Section 1833 of such Act (42 U.S.C. 1395) is amended by inserting after subsection (e) the following new subsection:

"(f)(1) In the case of shoes described in section 1861(s)(12)—

"(A) no payment may be made under this part for the furnishing of more than one pair of shoes for any individual for any calendar year, and

"(B) with respect to expenses incurred in any calendar year, no more than the limit established under paragraph (2) shall be considered as incurred expenses for purposes of subsections (a) and (b).

Payment for shoes under this part shall be considered to include payment for any expenses for the fitting of such shoes.

"(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the limit established under this paragraph—

"(i) for the furnishing of one pair of custom molded shoes is $300;

"(ii) for the furnishing of extra-depth shoes and inserts is—

"(I) $100 for the pair of shoes itself, and

"(II) $50 for inserts for a pair of shoes.

"(B) The Secretary or a carrier may establish limits for shoes that are lower than the limits established under subparagraph (A) if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below such lower limits.

"(C) For each year after 1988, each dollar amount under subparagraph (A) or (B) (as previously adjusted under this subparagraph) shall be increased by the same percentage increase as the Secretary provides with respect to durable medical equipment for that year, except that if such increase is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

"(3) In this title, the term 'shoes' includes, except for purposes of subparagraphs (A)(ii) and (B) of paragraph (2), inserts for extra-depth shoes.".

(c) MODIFICATION OF EXCLUSION.—Section 1862(a)(8) of such Act (42 U.S.C. 1395y(a)(8)) is amended by inserting ", other than shoes furnished pursuant to section 1861(s)(12)" before the semicolon.

(d) CONFORMING AMENDMENTS.—Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking out "paragraphs (12) and (13)" and inserting in lieu thereof "paragraphs (13) and (14)".

(e) CONTINGENT EFFECTIVE DATE; DEMONSTRATION PROJECT.—

(1) The amendments made by this section shall become effective (if at all) in accordance with paragraph (2).

(2)(A) The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary"), shall establish a demonstration project to begin on October 1, 1988, to test the cost-effectiveness of furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section to a sample group of medicare beneficiaries.

(B)(i) The demonstration project under subparagraph (A) shall be conducted for an initial period of 24 months. Not later than October 1, 1990, the Secretary shall report to the Congress on the results of such project. If the Secretary finds, on the basis of existing data, that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is cost-effective, the Secretary shall include such finding in such report, such project shall be discontinued, and the amendments made by this section shall become effective on November 1, 1990.

(ii) If the Secretary determines that such finding cannot be made on the basis of existing data, such project shall continue for an additional 24 months. Not later than April 1, 1993, the Secretary shall submit a final report to the Congress on the results of such project. The amendments made by this section shall become effective on the first day of the first month to begin after such report is submitted to the Congress unless the report contains a finding by the Secretary that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is not cost-effective (in which case the amendments made by this section shall not become effective).

SEC. 4030. DURABLE MEDICAL EQUIPMENT.

(a) PURCHASE OF EQUIPMENT.—Section 1889 of the Social Security Act (42 U.S.C. 1395zz) is amended:

(1) in subsection (a), by striking "In" and all that follows through the final period and inserting in lieu thereof the following: "Durable medical equipment (other than inexpensive equipment, or equipment that the Secretary designates as eligible for long-term rental) furnished by a participating provider (as defined in section 1842(h)(1)) shall be purchased on a lump sum or lease-purchase basis."; and

(2) by striking subsections (c) and (d) and inserting in lieu thereof the following new subsections:

"(c) Purchase of durable medical equipment (other than inexpensive equipment) on a lump sum basis shall be permitted only if the expected duration of the medical need for the equipment warrants a presumption that purchase of the equipment would be less costly than purchase on a lease-purchase basis.

"(d)(1) If payment for durable medical equipment (other than inexpensive equipment) is made in accordance with a lease-purchase agreement on an assignment-related basis, the total amount that may be paid (including coinsurance) may not exceed an amount equal to—

"(A) the reasonable charge on a lump sum basis, plus

"(B) a fair three month rental charge;

and title to the equipment shall pass to the individual if that sum is reached.

"(2) If payment is made for durable medical equipment (including inexpensive equipment) other than as provided by paragraph (1), or other than on a rental basis for equipment that the Secretary designates as eligible for long-term rental, the total amount that may be paid under this title may not exceed 80 percent (except as otherwise provided by subsection (b)) of the reasonable charge on a lump sum basis.

"(e) If a participating supplier (as defined in section 1842(h)(1)) offers for purchase or rental particular durable medical equipment, the supplier shall offer to furnish that equipment (other than inexpensive equipment) to an individual entitled to benefits under this title on a lease-purchase basis if the individual so requests.

"(f) If durable medical equipment is rented on an assignment-related basis, the beneficiary shall be entitled (as part of the terms under the assignment) to use of the equipment (without additional charge to the beneficiary beyond the coinsurance) as long as the equipment is needed.

"(g) For purposes of this section, the term 'inexpensive equipment' means equipment for which the prevailing charge does not exceed $120 (for equipment first furnished in 1988), or does not exceed that amount as may be adjusted by the Secretary from time to time (for equipment first furnished after 1988).".

(b) THREE-MONTH FREEZE ON INCREASES IN PAYMENTS.—Notwithstanding any other provision of law—

(1)(A) the payment levels under title XVIII of the Social Security Act for durable medical equipment, and other non-physician services paid on a reasonable charge basis under part B of such title, for the 3-month period beginning January 1, 1988, shall be no higher than the payment levels which were in effect under such title for such equipment on December 31, 1987, excluding reductions made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 (but subject to the provisions of section 4014 of this Act),

(B) the adjustment in the payment levels for such equipment and services that would have become effective January 1, 1988, if not for the enactment of subparagraph (A), shall become effective on April 1, 1988, and

(C) the adjustment in the inflation index change for such equipment that becomes effective January 1, 1989, shall be 75 percent of the adjustment that would otherwise be made on that date; and

(2)(A) subject to the last sentence of this subsection, each agreement with a participating supplier in effect for 1987 under section 1842(h)(1) of the Social Security Act shall remain in effect for the three-month period beginning on January 1, 1988; and

(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988.

An agreement with a participating supplier in effect for 1987 under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in paragraph (2)(A) if the participating supplier requests that the agreement be terminated.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to equipment first furnished an individual on or after April 1, 1988.

SEC. 4031. SERVICES OF A PHYSICIAN ASSISTANT.

(a) SERVICES COVERED.—Section 1861(s)(2)(K) of the Social Security Act (42 U.S.C. 1395x(s)(2)(K)) is amended by striking "defined)" and all that follows through "surgery" and inserting in lieu thereof "defined)".

(b) DETERMINATION OF PAYMENT AMOUNT.—Section 1842(b)(12)(B) of such Act (42 U.S.C. 1395u(b)(12)(B)) is amended to read as follows:

"(B) In subparagraph (A)(ii)(II), the term 'applicable percentage' means—

"(i) 75 percent in the case of services performed (other than as an assistant at surgery) in a hospital,

"(ii) 85 percent in the case of services performed in a skilled nursing facility or intermediate care facility, and

"(iii) 65 percent in the case of other services.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after January 1, 1988.

SEC. 4032. PAYMENT FOR AMBULATORY SURGERY AT EYE, AND EYE AND EAR, SPECIALTY HOSPITALS.

(a) IN GENERAL.—Section 1833(i)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended—

(1) by striking "In" and inserting in lieu thereof "Subject to the last sentence of this clause, in"; and

(2) by adding at the end thereof the following:

"In the case of a hospital that makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary), receives more than 30 percent of its total revenues from outpatient services, and was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987, the cost proportion and ASC proportion in effect under subclauses (I) and (II) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning in subsequent fiscal years.".

(b) STUDY ON PAYMENT RATES.—The Secretary of Health and Human Services shall conduct a study on modifying the amount of payments permitted under section 1833(i) of the Social Security Act with respect to hospitals that specialize in specific surgical procedures and shall report the results of such study to the Congress not later than twelve months after the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the amendment made by section 9343(a)(1)(B) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4033. CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) PAYMENT.—Section 1833(h) of the Social Security Act (42 U.S.C. 1395l(h)(2)) is amended—

(1) in paragraph (2), by striking "60" and "62" and inserting in lieu thereof "55" and "57", respectively; and

(2) in paragraph (4)(B)—

(A) by striking "or" at the end of clause (i), and

(B) by striking clause (ii) and inserting in lieu thereof the following new clauses:

"(ii) after December 31, 1987, and before January 1, 1989, is equal to 100 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1), or

"(iii) after December 31, 1988, and so long as a fee schedule for the test has not been established on a nationwide basis, is equal to 97 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).".

(b) INTERMEDIATE SANCTIONS.—Part B of title XVIII is amended by adding at the end thereof the following new section:

"INTERMEDIATE SANCTIONS FOR PROVIDERS OF CLINICAL DIAGNOSTIC LABORATORY TESTS"

"SEC. 1846. (a) If the Secretary determines that any provider or clinical laboratory certified for participation under this title no longer substantially meets the conditions of participation specified under this title with respect to the provision of clinical diagnostic laboratory tests under this part, the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (b), in lieu of canceling immediately the certification of the provider or clinical laboratory.

"(b)(1) The Secretary shall develop and implement—

"(A) a range of intermediate sanctions to apply to providers or certified clinical laboratories under the conditions described in subsection (a), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) directed plans of correction,

"(ii) civil fines and penalties,

"(iii) payment for the costs of onsite monitoring by an agency responsible for conducting certification surveys, and

"(iv) suspension of all or part of the payments to which a provider or certified clinical laboratory would otherwise be entitled under this title with respect to clinical diagnostic laboratory tests provided on or after the date in which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (a).

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

"(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any fines, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective on January 1, 1990.

SEC. 4034. INCREASE IN PART B DEDUCTIBLE.

(a) IN GENERAL.—Section 1833(b) of the Social Security Act is amended by striking "$75" and inserting in lieu thereof "$85".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to calendar years after 1988.

Subpart IV—Provisons Affecting PRO's

SEC. 4041. REFORMS OF PEER REVIEW PROGRAM.

(a) REPORT ON IMPROVEMENTS IN PROCEDURES FOR IMPOSING SANCTIONS.—Not later than one year after the date of enactment of this Act, the Secretary of Health and Human Services shall report to Congress on the improved procedures for imposing sanctions against a practitioner or person under section 1156 of the Social Security Act established through agreement by the Health Care Financing Administration, the American Association of Retired Persons, the American Medical Association, and the Office of the Inspector General in the Department of Health and Human Services. The report shall set forth such improved procedures, describe the response of physicians and providers to the procedures, assess whether the procedures effect an appropriate balance between procedural fairness and the need for ensuring quality medical care, comment on the alternative provider-patient notification procedure contained in the agreement, and recommend whether such procedures should apply to institutional providers of health care services.

(b) REQUIRING REASONABLE NOTICE AND OPPORTUNITY FOR DISCUSSION PRIOR TO DENIAL OF CLAIM.—

(1) Section 1154(a)(3) of the Social Security Act (42 U.S.C. 1320c-3(a)(3)) is amended to read as follows:

"(3)(A) Subject to subparagraph (B), whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such patient and the agency or organization responsible for the payment of claims under title XVIII of this Act of such determination.

"(B) The notification under subparagraph (A) shall not occur until the organization has—

"(i) made a preliminary notification to such practitioner or provider of such determination, and

"(ii) provided such practitioner or provider an opportunity for discussion and review of the determination.

The discussion and review conducted under subparagraph (B)(ii) shall not affect the rights of a practitioner or provider to a formal reconsideration of a determination under this part (as provided under section 1155).".

(2) The amendment made by subsection (a) shall apply with respect to services or items furnished or to be furnished on or after the date of enactment of this Act.

(c) SEPARATE FUNDING LEVELS.—

(1) Section 1866(a)(1)(F)(i)(III) of the Social Security Act (42 U.S.C. 1395cc(a)(1)(F)(i)(III)) is amended—

(A) by striking "1986" and inserting in lieu thereof "1988"; and

(B) inserting "and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year" after "inflation".

(2) Section 1866(a)(4)(C)(ii) of such Act (42 U.S.C. 1395cc(a)(4)(C)(ii)) is amended to read as follows:

"(ii) shall not be less in the aggregate for a fiscal year—

"(I) in the case of hospitals, than the amount specified in paragraph (1)(F)(i)(III), and

"(II) in the case of facilities and agencies, than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such facilities or agencies under part B of title XI.".

(3) The amendments made by this subsection shall apply with respect to fiscal years beginning on or after October 1, 1988.

(d) CONTRACT REQUIREMENTS.—

(1) Section 1153 of the Social Security Act (42 U.S.C. 1320c-2) is amended by adding at the end thereof the following new subsection:

"(h)(1) The Secretary shall publish in the Federal Register any new policy or procedure adopted by the Secretary that affects the performance of contract obligations under this section not less than 45 days prior to the date on which such policy or procedure is to take effect.

"(2) The Secretary shall publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations under this section and shall provide opportunity for public comment with respect to such criteria and standards.

"(3) The Secretary shall regularly furnish each peer review organization with a contract under this section with a report that documents the performance of the organization in relation to the performance of other such organizations.".

(2) Section 1153(e) of such Act (42 U.S.C. 1320c-2(e)) is amended—

(A) by inserting "(1)" after "(e)";

(B) by striking "Contracting" and inserting in lieu thereof "Except as provided in paragraph (2), contracting"; and

(C) by adding at the end thereof the following new paragraph:

"(2) If a peer review organization with a contract under this section is required to carry out a review function in addition to any function required to be carried out at the time the Secretary entered into or renewed the contract with the organization, the Secretary shall, prior to requiring such organization to carry out such additional function, negotiate the necessary contractual modifications, including modifications that provide for an appropriate adjustment (in light of the cost of such additional function) to the amount of reimbursement made to the organization.".

(3) Section 1153(c)(3) of such Act (42 U.S.C. 1320c-2(c)(3)) is amended by striking "two" and "biennial" and inserting in lieu thereof "three" and "triennial", respectively.

(4)(A) The amendments made by paragraphs (1) and (2) shall become effective on the date of enactment of this Act.

(B) The amendment made by paragraph (3) shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act.

(e) PREFERENCE IN CONTRACTING WITH IN-STATE ORGANIZATIONS.

(1) Section 1153(b)(1) of such Act (42 U.S.C. 1320c-2(b)(1)) is amended by striking "1152(1)(A)" and inserting in lieu thereof "1152(1)(A). If more than one such qualified organization meets the criteria of the preceding sentence, the Secretary shall give additional consideration to an in-State organization. For purposes of this section, an in-State organization is an organization that has its primary place of business in the State in which review will be conducted (or, which is owned by a parent corporation the headquarters of which is located in such State).".

(2) Section 1153 of such Act, as amended by subsection (d)(1), is further amended by adding at the end thereof the following new subsection:

"(i)(1) Notwithstanding any other provision of this section, the Secretary shall not renew a contract with any organization that is not an in-State organization unless the Secretary has first complied with the requirements of paragraph (2).

"(2)(A) Not later than six months before the date on which a contract period ends with respect to an organization that is not an in-State organization, the Secretary shall publish in the Federal Register—

"(i) the date on which such period ends; and

"(ii) the period of time in which an in-State organization may submit a proposal for the contract ending on such date.

"(B) If one or more qualified in-State organizations submits a proposal within the period of time specified under subparagraph (A)(ii), the Secretary shall not automatically renew the current contract on a noncompetitive basis, but shall provide for competition for the contract in the same manner as a new contract under subsection (b).".

(3)(A) The amendment made by paragraph (1) shall apply with respect to contracts entered into on or after the date of enactment of this Act.

(B) The amendment made by paragraph (2) shall apply with respect to contracts scheduled to be renewed on or after the first day of the eighth month to begin after the date of enactment of this Act.

(f) REQUIREMENTS RELATING TO FUNCTIONS OF PEER REVIEW ORGANIZATIONS.—

(1) Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)) is amended by adding at the end thereof the following new paragraph:

"(15) During each year of the contract entered into under section 1153(b), the organization shall perform not less than 20 percent of its review activities of rural hospitals under paragraph (1) on the site where services or items are provided and shall include, as part of such on-site review, on-site review at each rural hospital in the organization's area.".

(2) Section 1154(a)(4)(B) of the Social Security Act (42 U.S.C. 1320c-3(a)(4)(B)) is amended—

(A) by inserting before the period at the end of the first sentence the following: "and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1876, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization"; and

(B) by striking "previous sentence" and inserting in lieu thereof "previous two sentences".

(3) Section 1154(a)(5) of such Act (42 U.S.C. 1320c-3(a)(5)) is amended—

(A) by inserting "(A)" after "(5)"; and

(B) by adding at the end thereof the following new subparagraph:

"(B) The organization shall arrange for several educational sessions to be conducted during a year at hospitals in the organization's area for the purpose of providing providers, practitioners, and hospital personnel with the criteria used by the organization in making the determinations under subparagraphs (A), (B), and (C) of paragraph (1) with respect to such hospital.".

(4) Section 1154(a)(7)(A) of such Act (42 U.S.C. 1320c-3(a)(7)(A)) is amended—

(A) by inserting "(i)" after "(A)";

(B) by striking the semicolon and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new clause:

"(ii) in the case of psychiatric and physical rehabilitation services, make arrangements to ensure that (to the extent possible) initial review of such services be made by a physician who is trained in psychiatry or physical rehabilitation (as appropriate).".

(5) Section 1154(a)(6) of such Act (42 U.S.C. 1320c-3(a)(6)) is amended by adding at the end thereof the following:

"As a component of the norms described in subparagraph (A) or (B), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and social factors that affect the safety and efficacy of service delivery.".

(6) The amendments made by this subsection shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act.

(g) TELECOMMUNICATIONS DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasibility of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title. Under such demonstration projects, the Secretary of Health and Human Services may provide for payments to physicians consulted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.

(h) PROVIDER REPRESENTATION OF MEDICARE BENEFICIARIES DURING APPEALS OF PEER REVIEW DETERMINATIONS.—Section 1155 of such Act (42 U.S.C. 1355) is amended—

(1) by inserting "(a)" before "Any"; and

(2) by adding at the end thereof the following new subsection:

"(b) Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this section by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. If a person furnishes services or items to an individual and represents the individual under this section, the person may not impose any financial liability on such individual in connection with such representation.".

(i) FINANCIAL LIABILITY OF MEDICARE BENEFICIARIES IN CASE OF DENIAL OF PAYMENT FOR SUBSTANDARD CARE.—

(1) Section 1866(a)(1)(K) of such Act (42 U.S.C. 1395cc(a)(1)(K)) is amended by striking "person" and inserting in lieu thereof "person any amounts (including the amount of any copayment or deductible under this title)".

(2) Section 1842(l)(1)(A)(iii) of such Act (42 U.S.C. 1395u(l)(1)(A)(iii)) is amended—

(A) by inserting "(I)" after "(iii)";

(B) by striking "and" and inserting in lieu thereof "or"; and

(C) by adding at the end thereof the following new subclause:

"(II) a peer review organization determines under part B of title XI that payment may not be made by reason of section 1154(a)(1)(B), and".

(3) Section 1842(b)(3)(B)(ii)(II) of such Act (42 U.S.C. 1395(b)(3)(B)(ii)(II)) is amended by striking "1862(a)" and inserting in lieu thereof "1862(a) or by reason of a determination under section 1154(a)(1)(B)".

(4)(A) The amendment made by paragraph (1) shall apply to provider agreements as of the date of enactment of this Act.

(B) The amendments made by paragraph (2) shall apply to items and services furnished on or after the date of enactment of this Act.

(C)(i) The amendment made by paragraph (3) shall apply to items and services furnished on or after the date of enactment of this Act.

(ii) The Secretary of Health and Human Services shall provide for such timely amendments to contracts under section 1842 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendment made by paragraph (3).

(j) Patient Liability for Hospital Charges During Appeal of Discharge Notice.—

(1) Section 1154(e)(2) of such Act (42 U.S.C. 1320c-3(e)(2)) is amended by adding at the end thereof the following: "If the hospital requests such a review, it shall also notify the patient that the review has been requested.".

(2) Sections 1154(e)(3)(A)(i) (42 U.S.C. 1320c-3(e)(3)(A)(i)) and 1154(e)(3)(B) (42 U.S.C. 1320c-3(e)(3)(B)) of such Act are each amended by inserting "or (2)" after "paragraph (1)".

(k) Restriction on OMB Authority to Apportion Peer Review Funding.—Notwithstanding any other provision of law, the amounts payable from the Trust Funds under parts A and B of title XVIII of the Social Security Act for carrying out the provisions of part B of title XI of such Act shall not be subject to the apportionment authority of the Office of Management and Budget (as described in subchapter II of chapter 15, title 31, United States Code).

Subpart V—Provisions Affecting Medicaid

SEC. 4051. NURSING HOME QUALITY.

(a) REVISION OF REQUIREMENTS FOR SKILLED NURSING FACILITIES.—

(1) Subsection (j) of section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended to read as follows:

"SKILLED NURSING FACILITY

"(j) The term 'skilled nursing facility' means (except for purposes of subsection (a)(2)) an institution (or a distinct part of an institution) that has in effect a transfer agreement (meeting the requirements of subsection (l)) with one or more hospitals having agreements in effect under section 1866 and that meets the following requirements:

"(1) SERVICES.—The institution is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and is not primarily for the care and treatment of mental diseases.

"(2) DEVELOPMENT OF POLICIES.—The institution has policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides.

"(3) RESPONSIBILITY FOR EXECUTION OF POLICIES.—The institution has a physician, a registered professional nurse, or a medical staff responsible for the execution of the policies developed as provided in paragraph (2).

"(4) PHYSICIAN SUPERVISION.—The institution—

"(A) requires that the health care of every resident be provided under the supervision of a physician, and

"(B) provides for having a physician available to furnish necessary medical care in case of emergency.

"(5) CLINICAL RECORDS; ASSESSMENTS.—

"(A) The institution maintains clinical records (on a discipline-specific or interdisciplinary basis) on all residents.

"(B) The institution provides for—

"(i) accurate assessments of each patient in accordance with the requirements of subparagraph (C), and

"(ii) the results of such assessments to be recorded in the clinical records of the resident and to be used in formulating, reviewing, and revising the plan of care developed under paragraph (8).

"(C)(i)(I) A preliminary assessment shall be performed with respect to each resident within 48 hours of his or her admission to the institution. Such assessment shall be coordinated with any State-required preadmission screening to the maximum extent practicable in order to avoid duplicative testing and effort.

"(II) A comprehensive assessment shall be performed with respect to each resident within 21 days of his or her admission to the institution, at least annually thereafter, and whenever there is a significant change in the resident's mental or physical condition.

"(ii) An assessment required by this paragraph—

"(I) shall include (but not be limited to) the identification of medical problems and the assessment of physical, mental, and psychosocial functioning,

"(II) shall be coordinated by a registered professional nurse and carried out in consultation with appropriate health care providers (such as licensed practical nurses, nursing aides, activities professionals, social workers, pharmacists, nutritionists, mental health professionals, and rehabilitation therapists),

"(III) shall utilize a minimum data set of core elements and common definitions and guidelines for utilization specified by the Secretary (in accordance with guidelines established by the Secretary), and

"(IV) shall be available for review and comment by the resident in accordance with the resident's right to participate in developing his or her plan of care under paragraph (8)(A)(i).

"(D) The institution must not admit, on or after January 1, 1989, any new resident who—

"(i) is mentally ill (as defined in section 1902(o)(7)) unless the State mental health authority, based on an independent physical and mental evaluation, has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by such institution, and, if the individual requires such level of services, whether the individual requires active treatment for mental illness, or

"(ii) is mentally retarded (as defined in section 1902(o)(7)) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by such institution, and, if the individual requires such level of services, whether the individual requires active treatment for mental retardation.

The institution must make a copy of any such determination part of the resident's clinical records.

"(6) Required nursing care and social services.—

"(A) Except as provided in subparagraph (C), the institution provides 24-hour licensed nursing service that is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (2), and has at least one registered professional nurse employed full time.

"(B) Except as provided in subparagraph (C), in the case of an institution with more than 120 beds, the institution has at least one social worker (with at least a bachelor's degree in social work) employed full time.

"(C) A State may waive a requirement of subparagraph (A) or (B) with respect to an institution if—

"(i) the institution demonstrates to the satisfaction of the State that the institution has been unable, despite diligent efforts (including offering wages at the community prevailing rate), to recruit appropriate personnel, and

"(ii) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the institution.

A waiver under this subparagraph shall be subject to annual renewal and to the review of the Secretary (as described in section 1902(a)(33)(B)) and shall be accepted by the Secretary for purposes of this title to the same extent as is the State's certification of the institution.

"(7) Drugs and biologicals.—The institution establishes appropriate methods and procedures for the dispensing and administering of drugs and biologicals.

"(8) Scope of services under plan of care.—The institution provides services to maintain or improve each resident's mental and psychosocial well-being, as well as physical well-being, in accordance with a written plan of care which—

"(A) is developed—

"(i) to the extent practicable, in consultation with the resident (or his or her legal representative), and

"(ii) by a multidisciplinary team coordinated by a registered professional nurse,

"(B) is periodically reviewed and revised after each assessment under paragraph (5)(B), and

"(C) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met.

"(9) Nondiscrimination.—

"(A) The institution establishes and maintains identical policies and practices regarding transfers, discharges, and the provision of those services required under this title or the State plan under title XIX for all individuals regardless of source of payment.

"(B)(i) The institution does not require individuals applying to reside or residing in the institution to waive their rights to benefits under this title or title XIX.

"(ii) The institution prominently displays in the institution and provides to individuals applying to reside or residing in the institution written information regarding how to apply for and use benefits under this title or title XIX and how to receive refunds for previous payments covered by such benefits.

"(C)(i) Subject to clauses (ii) and (iii), the institution does not require any oral or written assurance from any person with respect to an individual who is staying in (or applying for admission to) the institution that such person will be financially responsible for any charges with respect to the individual.

"(ii) An institution may require a person who is authorized by law to disburse the income of such an individual to enter into an agreement to pay, solely from the income of the individual, for items and services furnished to the individual for which payment may not be made under this title or under a State plan approved under title XIX.

"(iii) Where an institution furnishes, at the request of an individual, items or services for which payment may not be made (in whole or in part) under this title or under a State plan approved under title XIX, such institution may require payment by the individual (or by another on behalf of the individual) in an amount equal to the amount for which payment may not be made under such title or plan if, before accepting an item or service, the individual is informed of the amount for which payment will not be made for such item or service. The eligibility of an individual for benefits under this title or medical assistance under title XIX shall not be affected by any payment made by such individual (or other person on behalf of the individual) under the preceding sentence, and the failure to make any such payment shall not constitute grounds for transfer or discharge from the institution.

"(D) The institution does not require (as a condition of admission or continued stay in the facility) any nonrefundable deposit, gift, contribution, or prepayment to be made by or on behalf of an individual.

"(10) Resident's rights.—The institution protects and promotes the rights of individuals residing in the institution, including each of the following rights:

"(A) The right to be informed orally and in writing at the time of admission to the institution of the resident's legal rights during the stay at the facility and to have these rights described in a written statement, which is made available to the resident upon reasonable request and which is updated upon changes in such rights.

"(B) The right to be informed in writing before or at the time of admission and periodically during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this title or under a State plan approved under title XIX, or not covered by the facility's basic per diem rate.

"(C) In the case of an individual who is unable (as determined by State law) to exercise his or her rights, the rights (as specified in regulation by the Secretary) that may be exercised by another person on behalf of the resident (as permitted under State law).

"(D) The right to prompt efforts by the institution to resolve grievances the individual may have, including those with respect to the behavior of other residents.

"(E) The right to file complaints, voice grievances, and recommend changes in policies and service to the staff of the facility and to outside representatives of his or her choice, free from restraint, interference, coercion, discrimination, or reprisal.

"(F) The right (with those of family members) to organize, maintain, and participate in resident advisory and family councils, including the right to assistance from a designated staff member, space, and privacy for meetings.

"(G) The right to participate freely in social, religious, and community activities that do not interfere with the rights of others residing in the facility.

"(H) The right to associate and communicate privately with persons of his or her choice.

"(I) The right to examine, upon reasonable request, the results of the most recent certification survey conducted by the Secretary or a State or local agency with respect to the institution and any plan of correction in effect with respect to the institution.

"(J) Any other right established by the Secretary.

"(11) TRANSFER AND DISCHARGE RIGHTS.—

"(A) An individual is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment of his stay (except as prohibited by titles XVIII or XIX of the Social Security Act), and is given reasonable advance notice to ensure orderly transfer or discharge.

"(B) The institution documents in a resident's records the circumstances of a discharge or transfer.

"(C) The institution notifies a resident, as evidenced by a signed acknowledgment, at least 30 days in advance of the resident's transfer or discharge except where—

"(i) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

"(ii) a more immediate transfer or discharge is necessitated by the resident's urgent medical needs,

as explicitly recorded by the attending physician in the resident's record.

"(D) Before effecting a transfer of a resident, the institution provides the resident with—

"(i) a notice of the resident's right to appeal the transfer to the State survey and certification agency, and

"(ii) the name, mailing address, and telephone number of the State long-term care ombudsman.

"(E) The institution provides sufficient preparation and orientation to residents to provide for safe and orderly transfer or discharge from the institution.

"(F) The institution provides—

"(i) written information to each individual entitled to benefits under a State plan approved under title XIX concerning the provisions of the State plan regarding bed holds before discharging the resident for hospitalization or therapeutic leave, and

"(ii) at the time of discharge of a resident to a hospital or for therapeutic leave, written notice to the resident of the duration of any bed hold under the State plan.

"(G) The Secretary shall establish requirements pertaining to inter- and intra-institution transfers and discharges, including patient rights of notice and appeal.

"(12) Access and visitation rights.—The institution—

"(A) permits immediate access to any resident by any officially designated representative of the Secretary, the State (including representatives of the State office of long-term care ombudsman), the resident's individual physician, relatives who are visiting with the consent of the individual, and other individuals designated in writing by the resident,

"(B) permits reasonable access during regular business hours by any entity or individual that provides health, social, or legal services to a resident, and

"(C) permits representatives of the State office of long-term care ombudsman, with the permission of the resident (or his or her legal representative) and consistent with State law, to examine a resident's medical, nursing, and social records.

"(13) Quality of life.—The institution cares for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

"(14) Quality of care.—(A) The institution meets the needs of each resident for necessary medical, nursing, restorative, and psychosocial services that permit the resident to attain and maintain the highest feasible level of functioning in the least restrictive environment possible in light of his or her condition.

"(B) The Secretary shall establish standards for assessing the quality of care provided by institutions in at least the following areas:

"(i) vision and hearing,
"(ii) activities of daily living,
"(iii) use of physical restraints,
"(iv) accidents,
"(v) nutrition and fluid intake,
"(vi) cognitive, behavioral, and social functioning,
"(vii) use of urinary catheters,
"(viii) prevention and care of pressure ulcers, and
"(ix) use of drugs.

"(15) Quality assessment and assurance.—The institution maintains a quality assessment and assurance program that meets the following requirements:

"(A) A committee, consisting of the director of nursing services, a physician designated by the institution, and at least three other members of the staff, meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary.

"(B) One member of the committee described in subparagraph (A) is assigned primary responsibility for ongoing coordination and oversight of quality assessment and assurance activities.

"(C) The committee seeks comments and suggestions from residents and staff with respect to quality assessment and assurance issues (and maintains a permanent record of the comments and suggestions received).

"(D) Issues addressed by the committee at least annually shall include—

"(i) prevention measures and the occurrence of infectious diseases,

"(ii) the promotion of behavioral, cognitive, and social functioning,

"(iii) quality of life,

"(iv) use of medications (including a review of each resident's drug regimen),

"(v) use of chemical and physical restraints,

"(vi) appropriateness, adequacy, and implementation of nursing plans,

"(vii) frequency and seriousness of accident reports (and measures for preventing accidents), and

"(viii) frequency and resolution of residents' grievances and complaints (and mechanisms for monitoring the satisfaction of residents with the quality of care).

"(E) The committee develops and implements appropriate plans of action to correct identified quality deficiencies.

"(F) The committee—

"(i) documents—

"(I) the time expended by it in quality assessment and assurance activities, and

"(II) the issues that it has addressed, and

"(ii) makes such documentation available, upon request, to Secretary and to the appropriate agency responsible for conducting certification surveys with respect to the institution.

"(G)(i) Except as provided in clause (ii), the confidentiality of committee records is maintained.

"(ii) Committee records shall be made available in accordance with subparagraph (F)(ii) and as required by any other provision of law or by court order.

"(H) In determining whether an institution complies with the requirements of this paragraph, the Secretary and the appropriate State agency responsible for conducting certification surveys with respect to the institution shall take into account the degree to which the committee identified and acted upon any deficiencies found with respect to the institution.

"(16) REQUIRED TRAINING OF NURSE AIDES.—

"(A)(i) The institution—

"(I) provides (by itself or through others) training under a program that is recognized and approved by the State under clause (ii) for individuals that are hired or utilized by the institution as nurse aides, and

"(II) does not employ or utilize any individual as a nurse aide for more than 6 months unless the individual has successfully completed a training and competency evaluation program that is recognized and approved by the State under clause (ii).

"(ii) Not later than January 1, 1990, each State, as a condition of approval of its State plan under title XIX, shall—

"(I) specify those training programs that the State recognizes and approves (in consultation with providers, consumers, nurse aides, health care professionals, and other interested groups) for purposes of subparagraph (A) and that meet the minimum requirements established under clause (iii)(I), and

"(II) maintain a registry of all individuals who have successfully completed such a program and records of all test results with respect to the program.

"(iii) Not later than one year after the date of the enactment of this paragraph, the Secretary shall establish—

"(I) minimum standards for the training and competency evaluation programs described in clause (i), and

"(II) minimum standards for the mechanism by which a State recognizes and approves such programs.

"(iv) The standards referred to in clause (iii)(I) shall specify the minimum amount of time required for initial and ongoing training (not less than 75 hours in the case of initial training), the areas to be included in a training and testing program (including, at a minimum, basic nursing skills, personal care skills, cognitive, behavioral, and social care, basic restorative services, and residents' rights), and the minimum qualifications for instructors in the program.

"(v) The standards referred to in clause (iii)(II) shall specify the frequency with which training and competency evaluation programs shall be reviewed by a State and the methodology (which shall include performance-based evaluations as well as analysis of written submissions) by which a State shall make determinations with respect to whether a program meets the minimum standards established pursuant to clause (iii)(I).

"(vi)(I) The requirement of clause (i)(I) shall apply with respect to individuals hired on or after January 1, 1990.

"(II) No individual who is hired before the date specified in subclause (I) may be employed by an institution as a nurse aide on or after the date that is three years after the date of the enactment of this paragraph unless the individual has successfully completed a competency evaluation program that is recognized and approved by the State under clause (ii). In the case of any such individual, the institution shall allow the individual at least three opportunities to complete such a program successfully and shall make a good faith effort to provide the individual with the preparation necessary to complete such a program successfully.

"(B) The institution does not permit any nurse aide to provide unsupervised patient care of a type for which the aide has not demonstrated his or her competency.

"(C) The institution requires any nurse aide who has ceased providing direct patient care for more than 24 months to complete an appropriate training and competency evaluation program before again providing such care.

"(D) The institution has an ongoing program of training and performance review for nurse aides, including training for individuals providing special care to residents such as those with cognitive impairments.

"(E) The institution provides each new nurse aide an orientation to the facility and to the residents for whom the aide provides care (in addition to the general initial training and competency testing program).

"(F) The institution assures that all aides are able to read, speak, and write sufficiently to perform assigned duties.

"(17) Administration.—(A) The institution is administered in a manner that enables it to use its resources effectively and efficiently to maintain and improve the residents' physical, mental, and psychosocial well-being.

"(B) The Secretary shall establish criteria for assessing an institution's compliance with the requirement of this paragraph with respect to—

"(i) its governing body,

"(ii) its management (including nursing services),

"(iii) resident and consumer participation,

"(iv) medical direction and physicians' services (including the use of physicians' assistants and nurse practitioners),

"(v) laboratory, radiological, and pharmaceutical services,

"(vi) resident care (including medical records),

"(vii) agreements regarding transfers of residents to and from hospitals, and

"(viii) levels of professional staffing.

"(18) Level of staffing.—

"(A) The staffing of the institution is at a level to meet the needs of its residents.

"(B) The compliance of an institution with the requirement of subparagraph (A) shall be determined pursuant to the certification and survey process established under section 1864(d) and not pursuant to any reports required to be filed by the institution on a quarterly or other periodic basis. No institution may be required by the Secretary or a State, under this title or title XIX, to submit a quarterly staffing report on or after the date of the enactment of this paragraph.

"(19) Utilization review; plan and budget.—The institution has in effect—

"(A) a utilization review plan that meets the requirements of subsection (k), and

"(B) an overall plan and budget that meets the requirements of subsection (z).

"(20) Independent evaluation.—The institution cooperates in an effective program that provides for regular independent medical evaluation and audit of the residents of the institution to the extent required by the programs in which the institution participates (including medical evaluation of each resident's need for skilled nursing facility services).

"(21) PROTECTION OF RESIDENT FUNDS.—The institution establishes and maintains a system for protecting the personal funds of residents that meets the following requirements—

"(A) STATEMENT OF RESIDENT'S RIGHTS.—The institution furnishes each resident, upon admission to the institution, with a written statement that—

"(i) describes all services furnished by the institution that can be charged to the resident's personal funds and the extent to which any such service is included in the institution's basic rate;

"(ii) states there is no obligation for the resident to deposit personal funds with the institution and describes the resident's right to select how such funds are handled; and

"(iii) describes the institution's obligation, once it accepts the written authorization of the resident, to hold, safeguard, and account for the resident's personal funds in accordance with subparagraph (B).

"(B) MANAGEMENT OF PERSONAL FUNDS.—Upon the institution's acceptance of the written authorization of the resident (as described in subparagraph (A)(iii))—

"(i) the institution deposits any amount of personal funds in excess of $50 in an interest bearing account (or accounts) that is separate from any of the institution's operating accounts and credits all interest earned on such separate account to such account;

"(ii) with respect to any amount of personal funds not included in the account under clause (i), the institution maintains such funds in a non-interest bearing account or petty cash fund; and

"(iii) the institution assures a full and complete accounting of the personal funds so as to ensure that there is no commingling of such funds with the funds of the institution or with the funds of any individual other than another resident.

"(C) WRITTEN RECORD.—The institution maintains a written record of all financial transactions involving the personal funds of a resident who entrusts personal funds with the institution and affords the resident (or a legal representative of the resident) reasonable access to such record.

"(D) SURETY BOND.—The institution purchases a surety bond to guarantee the security of all personal funds of residents entrusted to the institution.

"(E) ELIGIBILITY NOTIFICATION.—The institution notifies the resident (or a legal representative of the resident) and the State agency under title XIX when the personal funds of the resident entrusted to the institution reach an amount that threatens the resident's eligibility for benefits under title XVI or medical assistance under title XIX.

"(F) LIMITATION ON CHARGES TO PERSONAL FUNDS.—The institution does not charge to the personal funds of a resident the costs of any item or service for which payment is made under this title or title XIX (as the case may be).

"(22) LICENSING AND LIFE SAFETY CODE.—

"(A) The institution is licensed under applicable State and local law.

"(B) The institution meets such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

"(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon an institution, but only if such waiver will not adversely affect the health and safety of residents, and

"(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents in nursing facilities.

"(23) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND PROFESSIONAL STANDARDS.—The institution operates and provides services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124) and with all accepted professional standards and principles.

"(24) ACTIVITIES PROGRAM.—The institution provides for an activities program, directed by a qualified professional, to encourage self care, resumption of normal activities, and maintenance of an optimal level of psychosocial functioning in a manner appropriate to the needs and interests of each resident.

"(25) MISCELLANEOUS.—The institution meets such other conditions relating to the health and safety of residents or relating to the physical facilities thereof as the Secretary may find necessary.

For purposes of subsection (a)(2), such term includes any institution that meets the requirements of paragraph (1). Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under this title. Nothing in this subsection shall be construed to require an institution that does not participate in the program under title XIX to accept payment under such title or to accept for treatment any individual for whom payment may be made under such title.".

(2) The first sentence of section 1905(c) of such Act (42 U.S.C. 1396d(c)) is amended by striking "and (4)" and all that follows through "funds." and inserting in lieu thereof "(4) meets the requirements of section 1861(j)(21) with respect to protection of patients' personal funds, and (5) except with respect to services

described in subsection (d), meets the requirements of paragraphs (5), (6), (9) through (18), and (24) of section 1861(j).".

(3) Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (13)(A), by inserting "which, in the case of skilled nursing facilities and intermediate care facilities, are adjusted in accordance with subsection (q)," after "State" the second place it appears; and

(B) by adding at the end thereof the following new subsection:

"(q)(1) Effective for fiscal years beginning on or after October 1, 1989, the plan of a State shall not be considered to have met the requirement of subsection (a)(13) unless the State has, as of April 1 before the fiscal year concerned, submitted to the Secretary an amendment to the plan to provide for an appropriate adjustment in the payment rates for skilled nursing facilities and intermediate care facilities to reflect the costs of complying with any requirement under section 1861(j) (as made applicable to this title by section 1905(i)) that takes effect during the fiscal year concerned which was not in effect on October 1, 1987, in Federal or State law or regulation.

"(2) The Secretary shall, not later than September 30 before the fiscal year concerned, review each plan amendment submitted under paragraph (1) for compliance with the requirement of subsection (a)(13). If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

"(3) The absence of approval of such a plan amendment does not relieve the State or any such facility of any obligation or requirement under this title.".

(4) Not later than January 1, 1990, the Secretary shall—

(A) specify a minimum data set for use by an institution in conducting the assessments required by section 1861(j)(5)(B) of the Social Security Act, and

(B) establish guidelines for utilization of the data set.

(5) Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (47),

(2) by striking the period at the end of paragraph (48) and inserting in lieu thereof "; and", and

(3) by adding at the end thereof the following new paragraphs:

"(49) provide that, with respect to an individual who is furnished skilled nursing facility services or intermediate care facility services under the plan, payment will be made under the plan for at least 3 bed hold days; and

"(50) provide that the State will meet the requirements of section 1902(r) with respect to screening, review, and disposition of mentally ill and mentally retarded residents of skilled nursing facilities and intermediate care facilities (other than intermediate care facilities for the mentally retarded).".

(6) Section 1902 of such Act, as amended by paragraph (3)(B), is further amended by adding at the end thereof the following:

"(r) STATE REQUIREMENTS FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—

"(1) PREADMISSION SCREENING.—Each State, as a condition of approval of its plan under this title, effective January 1, 1989, must have in effect a preadmission screening program, for making determinations (using any criteria developed under paragraph (8)) described in section 1861(j)(5)(D) for mentally ill and mentally retarded individuals (as defined in paragraph (7)) who are being considered for admission to nursing facilities on or after January 1, 1989.

"(2) STATE REQUIREMENT FOR ANNUAL RESIDENT REVIEW.—

"(A) FOR MENTALLY ILL RESIDENTS.—As a condition of approval of a State plan under this title, as of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must based on an independent physical and mental evaluation, determine (using any criteria developed under paragraph (8))—

"(i) whether or not the resident, because of the resident's physical or mental condition (or the lack of appropriate alternative placement), requires the level of services provided by a nursing facility or requires the level of services provided in another setting, including an inpatient psychiatric hospital for individuals under age 21 (as described in section 1905(h)) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older or a program under an approved home and community-based waiver under section 1915(c); and

"(ii) whether or not the resident requires active treatment for mental illness.

"(B) FOR MENTALLY RETARDED RESIDENTS.—As a condition of approval of a State plan under this title, as of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under paragraph (8))—

"(i) whether or not the resident, because of the resident's physical or mental condition (or the lack of appropriate alternative placement), requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1905(d) or a program under an approved home and community-based waiver under section 1915(c); and

"(ii) whether or not the resident requires active treatment for mental retardation.

"(C) FREQUENCY OF REVIEW .—

"(i) ANNUAL.—Except as provided in clauses (ii) and (iii), the reviews and determinations under subparagraphs (A) and (B) must be conducted with respect to each mentally ill or mentally retarded resident not less often than annually.

"(ii) PREADMISSION REVIEW CASES.—In the case of a resident subject to a preadmission review under section 1861(j)(5)(D), the review and determination under subparagraph (A) or (B) need not be done until the resident has resided in the nursing facility for 1 year.

"(iii) INITIAL REVIEW.—The reviews and determinations under subparagraphs (A) and (B) must first be conducted (for each resident not subject to preadmission review under section 1861(j)(5)(D)), by not later than April 1, 1990.

"(3) RESPONSE TO PREADMISSION SCREENING AND RESIDENT REVIEW.—As a condition of approval of a State plan, as of April 1, 1990, the State must meet the following requirements:

"(A) LONG-TERM RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under paragraph (2), not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and caregivers—

"(i) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

"(ii) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

"(iii) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

"(iv) regardless of the resident's choice, provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation.

A State shall not be denied payment under this title for nursing facility services for a resident described in this subparagraph because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

"(B) OTHER RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under paragraph (2), not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and caregivers—

"(i) arrange for the safe and orderly discharge of the resident from the facility,

"(ii) prepare and orient the resident for such discharge, and "(iii) provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation in an appropriate facility or program.

"(C) RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES AND NOT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under paragraph (2), not to require the level of services provided by a nursing facility and not to require active treatment for mental illness or mental retardation, the State must—

"(i) arrange for the safe and orderly discharge of the resident from the facility, and

"(ii) prepare and orient the resident for such discharge.

"(D) DENIAL OF PAYMENT WHERE FAILURE TO CONDUCT PREADMISSION SCREENING.—No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual for whom a determination is required under paragraph (2) or section 1861(j)(5)(D) but for whom the determination is not made.

"(5) PERMITTING ALTERNATIVE DISPOSITION PLANS.—With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under paragraph (2) not to require the level of services of such a facility, but who require active treatment for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirement of this paragraph if, before October 1, 1988, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in paragraph (3).

"(6) APPEALS PROCEDURES.—Each State, as a condition of approval of its plan under this title, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under paragraph (1) or (2).

"(7) DEFINITIONS.—In this subsection and section 1861(j)(5)(D):

"(A) Subject to the last sentence of this paragraph, an individual is considered to be 'mentally ill' if the individual has a primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition).

"(B) An individual is considered to be 'mentally retarded' if the individual requires services of the type provided by an institution described in section 1905(d).

"(C) The term 'active treatment' has the meaning given such term by the Secretary in regulations.

"(D) The term 'nursing facility' means a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded).

For purposes of subparagraph (A), the term 'mentally ill' does not include any organic disease of the brain or dementia (including Alzheimer's disease and related disorders).

"(8) FEDERAL MINIMUM CRITERIA FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—The Secretary shall develop, by not later than October 1, 1988, separate minimum criteria for States to use in making determinations under paragraph (2) and under section 1861(j)(5)(D) with respect to individuals who are mentally ill or mentally retarded, and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.".

(7)(A) Except as provided by subparagraphs (B) and (C), the amendments made by this subsection shall apply with respect to services furnished on or after January 1, 1988.

(B) Section 1861(j)(6) of the Social Security Act, as made applicable to intermediate care facilities by the amendment made by paragraph (2) of this section, shall apply—

(i) in the case of facilities with more than 120 beds, to services furnished on or after October 1, 1988,

(ii) in the case of facilities with more than 60 beds but not more than 120 beds, to services furnished on or after October 1, 1990, and

(iii) in the case of facilities with 60 beds or less, to services furnished on or after October 1, 1992.

(C) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (e), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(b) ESTABLISHMENT OF GRANT PROGRAM.—

(1) The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall establish a program of grants to skilled nursing facilities certified as providers under title XVIII of the Social Security Act. The purpose of the program shall be to promote the development by such facilities of projects that enhance the quality of care or the quality of life of residents of such facilities.

(2) Any skilled nursing facility that desires to receive a grant under this subsection to implement a project of the type described in paragraph (1) may submit an application to the Secretary, at such time and in such form and manner as the Secretary may prescribe.

(3) In determining which skilled nursing facilities making application under paragraph (2) will receive grants under this section, the Secretary shall take into account—

(A) the likelihood that the proposed project will achieve its stated objectives,

(B) the likelihood that the proposed project will serve as a model for similar projects in other facilities,

(C) the degree to which the funds provided by a grant will be matched by funds from non-Federal sources, and

(D) the support for the project by the ombudsman, the area agency on aging, nursing home residents and their families, nursing home staff, institutions of higher learning, and other providers of long-term care.

(4) A grant to a skilled nursing facility under this subsection may not exceed $25,000 a year.

(5)(A) A skilled nursing facility receiving a grant under this subsection shall furnish the Secretary with such information as the Secretary may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

(B) The Secretary shall submit a report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

(6) For purposes of carrying out the program of grants under this section, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $2,000,000 for each of the fiscal years 1988, 1989, and 1990.

(c) CHANGES IN CERTIFICATION PROGRAM AND PROCESS.—

(1) Section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended—

(A) by striking "or skilled nursing facility" and inserting in lieu thereof ", a skilled nursing facility, or an intermediate care facility",

(B) by striking "skilled nursing facility, rural health clinic" and inserting in lieu thereof "skilled nursing facility, intermediate care facility, rural health agency",

(C) by striking "facility, after" and inserting in lieu thereof "facility or intermediate care facility, after", and

(D) by inserting "or, in the case of an intermediate care facility, under title XIX" after "this title".

(2) Section 1864(a) of such Act, as amended by paragraph (1), is further amended by inserting, after "readily available form and place" in the fifth sentence, the following: ", and require (in the case of skilled nursing facilities and intermediate care facilities) the posting in a place readily accessible to residents (and residents' representatives),".

(3) Section 1106(e) of such Act (42 U.S.C. 1306(e)) is amended—

(A) by striking "60" the first place it appears and inserting in lieu thereof "30",

(B) by striking "report; nor" and inserting in lieu thereof "report. Nor",

(C) by striking "(e) No report" and inserting in lieu thereof "(e)(1) Except as provided in paragraph (2), no report", and

(D) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding the first sentence of paragraph (1), the Secretary may release a report described in subsection (d) to a State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) or a designee before the end of the 30-day period described in such sentence.".

(4) Section 1864 of such Act, as amended by paragraphs (1) and (2), is further amended by adding at the end thereof the following new subsection:

"(d)(1) Under each agreement under this section with a State with respect to determining whether an institution therein is a skilled nursing facility or an intermediate care facility, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of facilities (other than facilities of the State) with the applicable requirements of section 1861(j). The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State facilities with the applicable requirements of section 1861(j).

"(2)(A)(i) Each skilled nursing facility and intermediate care facility shall be subject to a standard survey of the facility's compliance with the applicable requirements of section 1861(j).

"(ii) A survey may be conducted upon any change of ownership and shall otherwise be conducted, on an unannounced basis, not later than 15 months after the date of the previous survey.

"(iii) The frequency with which surveys are conducted with respect to a facility shall be based upon the degree to which the facility was found, in the most recently conducted survey, to be in compliance with the applicable requirements of section 1861(j).

"(iv) The Statewide average interval between surveys of such facilities shall not exceed 12 months.

"(v) A survey shall include audits of a sample of the residents' assessments and plans of care provided under sections 1861(j)(5) and 1861(j)(8), respectively.

"(B) Each skilled nursing facility and intermediate care facility that is found to have performed poorly with regard to one or more of the applicable requirements of section 1861(j) shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion under the agreement, be subject to such an extended survey.

"(C) All surveys shall be conducted based upon regulations the substance of which the Secretary has developed, tested, and validated.

"(3) Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

"(4) Each State shall maintain procedures and adequate staff to investigate complaints of violations of applicable requirements by facilities.

"(5) The Secretary together with each State agency utilized under this section shall develop written procedures for review of survey findings in cases where the provider of services has substantial disagreement with such findings. Such procedures shall include a system for resolving significant differences in professional judgments about the appropriateness and quality of care (but in no event shall delay the timing of any enforcement action).

"(e)(1)(A) Not later than January 1, 1990, certification surveys under subsection (d) shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse and others selected in accordance with regulations of the Secretary).

"(B) Each State shall maintain and utilize a specialized survey team the duties of which shall include identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against chronically substandard facilities. Such a team shall include (or have prompt access to) an attorney, an auditor, and appropriate health care professionals.

"(2) Each member of a team described in paragraph (1) must receive comprehensive initial and continuing training (of not less than 40 hours annually) with respect to the conduct of such surveys (as approved by the Secretary).

"(3) No health care professional shall serve as a member of a team described in paragraph (1) unless he or she has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary and has experience or education in gerontological nursing or long-term care and in interviewing residents with communicative impairments.

"(4) No individual shall serve as a member of a team described in paragraph (1) if he or she is serving (or has served in the previous two years) as an employee of or consultant to the particular facility being surveyed.

"(f)(1) Each agency with an agreement with the Secretary under this section shall enter into a written agreement with the appropriate State long-term care ombudsman to provide for information exchange, training, case referral, and prompt notification of the ombudsman of any adverse action to be taken by the agency against a skilled nursing facility or intermediate care facility. Such agreement shall provide for access by the ombudsman to any inspection reports and notices of deficiencies, sanctions, or adverse determinations issued by the agency, and, consistent with Federal and State laws governing confidentiality of information, to investigative reports and findings made on account of complaints made by the ombudsman.

"(2) Each agency with an agreement with the Secretary under this section shall ensure that survey procedures are coordinated with the activities of State fraud and abuse units, resident protection and advocacy units, and the State agency under title XIX.

"(g) The Secretary shall develop and implement criteria and procedures for the evaluation of plans of correction submitted by institutions seeking compliance with the standards for skilled nursing facilities and intermediate care facilities. Such criteria and procedures shall be designed—

"(1) to maximize specificity in the plans,

"(2) to require on-site evaluation of the implementation of plans dealing with deficiencies relating to patient care, and

"(3) to emphasize the need for correction to provide for permanent compliance with the standards.

"(h)(1) Each year the Secretary shall conduct surveys of skilled nursing facilities and intermediate care facilities in each State in a sufficient number to allow inferences about the adequacy of each State's surveys conducted under subsection (d)(2).

"(2) Any survey conducted by the Secretary under paragraph (1) with respect to a facility shall be conducted within 1 month of the most recently conducted State survey with respect to that facility.

"(3) In no case shall the Secretary conduct surveys under paragraph (1) with respect to fewer than 5 percent of the facilities surveyed by the State in a year (or with respect to fewer than 5 facilities in each State).

"(4) If the results of a survey conducted by the Secretary under this subsection differ from the results of a survey conducted under subsection (d)(2), the results of the survey conducted by the Secretary shall be conclusive with respect to whether a facility complies with the applicable requirements of section 1861(j).

"(5) Not later than one year after the date of the enactment of this subsection, the Secretary shall by regulation prescribe—

"(A) performance and outcome standards to evaluate and assure the effectiveness of State survey activities (including standards to evaluate the general improvement in quality of care in certified facilities, how the findings from such activities compare with the Secretary's review findings, the appropriateness and effectiveness of State enforcement action, the extent to which repeat deficiencies occur, the extent to which deficiencies are not corrected in a timely manner, and complaint handling activities); and

"(B) administrative sanctions to be imposed on State survey agencies for poor performance (as determined under subparagraph (A)) in relation to the proportion of beneficiaries under this title placed at risk by such performance.

"(6) Each State, and the Secretary, shall make available to the public information with respect to all surveys and certifications made with respect to skilled nursing facilities and intermediate care facilities and information with respect to cost reports of such facilities filed under this title or under State plans approved under title XIX.".

(5) The amendments made by this subsection shall become effective January 1, 1990.

(d) Enforcement Process.—

(1) Section 1866(f) of such Act (42 U.S.C. 1395cc(f)) is amended by adding at the end thereof the following new paragraphs:

"(4)(A)(i) The Secretary shall develop and implement a range of intermediate sanctions to apply to facilities which have been determined to meet the conditions described in (1)(B). Such sanctions shall include—

"(I) directed plans of correction,

"(II) the appointment of receivers in accordance with paragraph (5), and

"(III) one or more of the sanctions specified in clause (ii).

"(ii) The sanctions specified in this clause are—

"(I) civil fines,

"(II) on-site monitoring by an agency responsible for conducting certification surveys (with the costs of such monitoring to be paid by the facility without reimbursement),

"(III) withholding or reducing amounts otherwise payable to a facility under this title or such a plan, and

"(IV) any other sanction designated by the Secretary.

"(iii) The Secretary shall develop and implement specific criteria as to when and how each of these intermediate sanctions is to be applied, the amounts of any fines, and the severity of each of these penalties. These criteria shall be designed so as to minimize the time between identification of violations and final imposition of these sanctions and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies. In accordance with such criteria, the Secretary may impose any such sanction in lieu of, or in addition to, imposing the sanction otherwise provided under paragraph (1).

"(B) In any case where intermediate sanctions imposed by a State pursuant to section 1902(i)(4) are in effect with respect to a facility, the Secretary shall review periodically (not less than once every 3 months) the effectiveness of such sanctions in promoting the correction of the deficiencies involved and shall withhold action under this subsection unless the Secretary determines that such sanctions are ineffective or that the facility's deficiencies immediately jeopardize the health and safety of its patients.

"(5)(A) In any case where the Secretary determines that a skilled nursing facility is chronically failing to meet substantially the requirements of section 1861(j) or of the provider agreement, or determines that the facility's deficiencies immediately jeopardize the health and safety of its patients—

"(i) the Secretary shall give public notice of such determination, and

"(ii) in the case of a skilled nursing facility that is not in a period of State-ordered receivership (as defined in subparagraph (C)), the Secretary may appoint a receiver to—

"(I) oversee the operation of the facility;

"(II) establish and oversee the implementation of a correction plan to bring the facility into compliance with the applicable requirements of the State plan, this title, title XIX, and State licensing requirements by a date set forth in the correction plan; and

"(III) assure the health and safety of the facility's patients during the receivership period.

"(B) Subject to paragraph (1), payment shall be made under this title with respect to any services furnished by any such facility to patients who remain in such facility during any period of receivership ordered by the Secretary or the State with respect to such facility.

"(C) For purposes of this paragraph, a period of State-ordered receivership with respect to a facility is a period during which—

"(i) the State has appointed a receiver to oversee the operation of the facility;

"(ii) the State has in effect a correction plan to bring the facility into compliance with the applicable requirements of the State plan, this title, title XIX, and State licensing requirements by a date set forth in the correction plan; and

"(iii) the State has taken measures to assure the health and safety of the facility's patients during the period.

"(D) Public notice shall also be given in any case in which such deficiencies are determined to be rectified.".

(2) Section 1902(i) of such Act (42 U.S.C. 1396a(i)) is amended by adding at the end thereof the following new paragraphs:

"(4)(A) If a State determines that a skilled nursing facility or intermediate care facility (other than a facility providing services described in section 1905(d)) that is certified for participation under its plan no longer meets the applicable requirements of section 1861(j) and further determines that the facility's deficiencies do not immediately jeopardize the health and safety of its residents, the State may, instead of terminating the facility's participation under the plan, impose one or more of the sanctions developed in accordance with subparagraph (B).

"(B)(i) The State shall develop and implement a range of intermediate sanctions to apply to facilities that have been determined to meet the conditions described in (1)(B). Such sanctions shall include—

"(I) directed plans of correction,

"(II) the appointment of receivers in accordance with paragraph (5), and

"(III) one or more of the sanctions specified in clause (ii).

"(ii) The sanctions specified in this clause are—

"(I) civil fines,

"(II) on-site monitoring by an agency responsible for conducting certification surveys (with the costs of such monitoring to be paid by the facility without reimbursement),

"(III) withholding or reducing amounts otherwise payable to a facility, and

"(IV) any other sanction designated or approved by the Secretary.

"(iii) The State shall develop and implement specific criteria as to when and how each of these intermediate sanctions is to be applied, the amounts of any fines, and the severity of each of these penalties. These criteria shall be designed so as to minimize the time between identification of violations and final imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In accordance with such criteria, the State may impose any such sanction in lieu of, or in addition to, imposing the sanction otherwise provided under paragraph (1).

"(5)(A) In any case where a State determines that a skilled nursing facility or an intermediate care facility (other than a facility providing services described in section 1905(d)) that is certified for participation under its plan is chronically failing to meet substantially the applicable requirements of section 1861(j) or of its agreement with the State, or determines that the facility's deficiencies immediately jeopardize the health and safety of its patients—

"(i) the State shall give public notice of such determination, and

"(ii) the State may appoint a receiver to—

"(I) oversee the operation of the facility;

"(II) establish and oversee the implementation of a correction plan to bring the facility into compliance with the applicable requirements of the title XIX, the State plan, section 1861(j), and State licensing requirements by a date set forth in the correction plan; and

"(III) assure the health and safety of the facility's patients during the receivership period.

"(B) Subject to paragraph (1), payment shall be made under this title with respect to any services furnished by any such facility to patients who remain in such facility during any period of receivership ordered by the Secretary or the State with respect to such facility.

"(C) Public notice shall also be given in any case in which such deficiencies are determined to be rectified.

"(6) The Secretary shall provide States with technical assistance in the development and implementation of the sanctions authorized by paragraphs (4) and (5).".

(3) The amendments made by this subsection shall become effective on October 1, 1990.

(e) LIST OF ITEMS AND SERVICES FURNISHED IN NURSING FACILITIES NOT CHARGEABLE TO THE PERSONAL FUNDS OF A RESIDENT.—

(1) The regulations required to be issued by the Secretary of Health, Education, and Welfare under section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 shall be issued by the Secretary of Health and Human Services on or before the first day of the seventh month to begin after the date of enactment of this Act.

(2) Notwithstanding any other provision of law, in the event the Secretary of Health and Human Services does not issue the regulations under paragraph (1) on or before such day, in the case of a resident of a facility (defined under section 1861(j) or 1905(c) of the Social Security Act) who is eligible to receive benefits under title XVIII of such Act or under a State plan under title XIX of such Act, the costs which may not be charged to the personal funds of such resident (and for which payment shall be made under title XVIII or XIX of such Act, as the case may be) shall include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(f) CERTAIN ITEMS AND SERVICES COVERED UNDER MEDICARE AND STATE MEDICAID PLANS.—The Secretary of Health and Human Services (in this subsection referred to as the "Secretary"), in consultation (as appropriate) with the State agencies administering or responsible for the administration of State plans under title XIX of the Social Security Act, shall compile, with respect to each State with a plan approved under that title, a list of the scope and extent of skilled nursing facility services and intermediate care facility services that are covered under the plan and a list of the scope and extent of extended care services and post-hospital extended care services for which payment is made under title XVIII of such Act. The Secretary, acting through the State agency, shall make the first such list compiled with respect to a State available to individuals entitled to medical assistance under the State plan and to providers of the services to which the list applies and shall make the second such list compiled available to individuals receiving benefits under part A of such title XVIII and to providers of the services to which the list applies. The Secretary shall provide for each list to be updated periodically to reflect any changes in the services to which the list applies.

(g) NATIONAL COMMISSION ON LONG-TERM CARE.—

(1) Part A of title XI of such Act is amended by adding at the end thereof the following:

"NATIONAL COMMISSION ON LONG-TERM CARE

"SEC. 1139. (a) The Director of the Office of Technology Assessment (in this section referred to as the 'Director' and the 'Office', respectively) shall provide for the appointment of a National Commission on Long-Term Care (in this section referred to as the 'Commission'), to be composed of independent experts appointed by the Director (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service).

"(b)(1) The Commission shall consist of 13 members. Members of the Commission shall first be appointed no later than October 1, 1988, for a term of 5 years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than 4 members expire in any one year.

"(2) The membership of the Commission shall provide expertise and experience in the provision and financing of long-term care. The Director shall seek nominations, and select at least one member of the Commission, from each of the following categories:

"(A) Representatives of Federal and State licensing and certification agencies.

"(B) Long-term care ombudsmen.

"(C) Consumers.

"(D) Representatives of organizations representing nursing homes.

"(E) Representatives of home health agencies.

"(F) Experts in long-term care policy.

"(G) Registered professional nurses.

"(H) Health care and allied professionals with experience relating to long-term care.

"(I) Individuals representing organizations of employees of skilled nursing facilities, intermediate care facilities, or home health agencies.

"(c) The provisions of subparagraphs (C), (D), (F), (G), (H), and (J) of section 1886(f)(6) shall apply to the Commission in the same manner and to the same extent that they apply to the Commission established under section 1886(f).

"(d)(1) The purpose of the Commission shall be advise the Congress with respect to—

"(A) methods of assessing and ensuring quality of care in long-term care facilities and home-care programs,

"(B) necessary and desirable changes in the programs for surveying and certifying such facilities and programs,

"(C) the costs, appropriate staffing, and reimbursement of such facilities and programs,

"(D) the effectiveness of Federal and State licensing and survey procedures and the enforcement of such procedures, and

"(E) maintaining and extending the access of individuals entitled to benefits under title XVIII or under a State plan approved under title XIX to long-term care and home health services (including the effects of State certificate of need requirements).

(2) In addition to carrying out its responsibilities pursuant to paragraph (1), the Commission shall investigate compliance with Federal medicaid requirements in any State that has low reimbursement rates for nursing home care and has moratorium on nursing home beds.

"(e) The Commission shall meet at least quarterly and shall convene such work groups, conferences, and public hearings as it considers necessary to assist it in carrying out its responsibilities.

"(f)(1) Not later than October 1, 1990, the Commission shall submit to the Congress and the Secretary of Health and Human Services (in this section referred to as the 'Secretary') a report setting forth recommendations with respect to—

"(A) the implementation of a system of reimbursement and staffing requirements for long-term care facilities under title XVIII of the Social Security Act that is based on the level of patient needs or the acuity of a patient's condition, or both, and

"(B) methods of ensuring the access of individuals entitled to benefits under title XVIII or under a State plan approved under title XIX to long-term care.

"(2) Not later than 9 months after the Commission submits its report under paragraph (1), the Secretary shall submit to the Congress proposed legislation to implement the recommendations set forth in such report.

"(g)(1) The Commission shall report annually to the Congress and the Secretary on the status of its studies and deliberations. The report shall set forth any recommendations that the Commission has developed in the preceding year with respect to matters relating to long-term care.

"(2) Not more than 90 days after the Commission submits a report under paragraph (1), the Secretary shall submit to the Congress a report setting forth the manner in which the Secretary proposes to implement any recommendations set forth in the report of the Commission, accompanied by proposed changes in law (if any) that the Secretary determines to be necessary to implement the recommendations of the Commission.

"(h)(1) There are authorized to be appropriated, from the Federal Hospital Insurance Trust Fund, such sums as may be necessary to carry out the provisions of this section.

"(2) The Commission shall submit requests for appropriations in the same manner as the Office submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Office.".

(2) The Commission shall conduct a study of the compliance with Federal quality standards by nursing homes in States that the Commission selects that have low reimbursement rates for nursing homes under title XIX of the Social Security Act and have moratoria or limits in effect on the number of nursing home beds.

(h) FINAL REGULATIONS WITH RESPECT TO PLANS OF CORRECTION OR REDUCTION.—

(1) Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4052. MEDICAID BENEFITS FOR POOR CHILDREN AND PREGNANT WOMEN.

(a) MEDICAID OPTIONAL COVERAGE FOR ADDITIONAL LOW-INCOME PREGNANT WOMEN AND CHILDREN.—Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(l)) is amended—

(1) in paragraph (2)—

(A) by striking "(2) For purposes of paragraph (1)" and inserting in lieu thereof "(2)(A) For purposes of paragraph (1) with respect to individuals described in subparagraph (A) or (B) of that paragraph",

(B) by striking "100 percent" and inserting in lieu thereof "160 percent", and

(C) by adding at the end the following new subparagraph:

"(B) If a State elects, under subsection (a)(10)(A)(ii)(IX), to cover individuals not described in subparagraph (A) or (B) of paragraph (1), for purposes of that paragraph and with respect to individuals not described in such subparagraphs the State shall establish an income level which is a percentage (not more than 100 percent, or, if less, the percentage established under subparagraph (A)) of the nonfarm income official poverty line described in subparagraph (A)."; and

(2) in paragraph (3)(D), by inserting "appropriate" after "applied is the".

(b) ALLOWING ACCELERATED COVERAGE OF CHILDREN UP TO AGE 5.—

(1) Section 1902(l)(1) of such Act (42 U.S.C. 1396a(l)(1)) is amended—

(A) by inserting "and" at the end of subparagraph (B), and

(B) by striking subparagraphs (C) through (F) and inserting in lieu thereof the following:

"(C) children born after September 30, 1983, and who have attained one year of age but have not attained 2, 3, 4, or 5 years of age (as selected by the State),".

(2) Section 1902(l) of such Act is further amended—

(A) in paragraph (3)(C), by striking ", (C), (D), (E), or (F)" and inserting in lieu thereof "or (C)", and

(B) in paragraph (4)(B)(ii), by striking ", (D), (E), or (F)".

(3) Section 1902(e)(7) of such Act (42 U.S.C. 1396a(e)(7)) is amended by striking ", (C), (D), (E), or (F)" and inserting in lieu thereof "or (C)".

(4) Section 9401(f)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "(A)" after "(2)" and by striking subparagraphs (B) through (D).

(c) COVERAGE OF CHILDREN UP TO AGE 8.—

(1) Section 1905(n)(2) of such Act (42 U.S.C. 1396d(n)(2)) is amended by striking "is under 5 years of age" and inserting in lieu thereof "has not attained the age of 6 (or any age designated by the State that exceeds 6 but does not exceed 8)".

(2) Section 1902(l)(1)(C) of such Act, as amended by subsection (b)(1)(B), is further amended by striking "or 5 years" and inserting in lieu thereof "5, 6, 7, or 8 years".

(d) PREMIUM.—Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(1) in subsection (a)(1), by inserting "(except for a premium imposed under subsection (c))" before the semicolon;

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection:

"(c)(1) The State plan of a State shall provide for imposing a monthly premium of $5 with respect to an individual described in subparagraph (A) or (B) of section 1902(l)(1) who is receiving medical assistance on the basis of section 1902(a)(10)(A)(ii)(IX) and whose family income (as determined in accordance with the methodology specified in section 1902(l)(3)) equals or exceeds 130 percent of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(2) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of an individual for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

"(3) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to medical assistance furnished on or after July 1, 1988.

(f) CERTIFICATION OF MEDICAID ELIGIBILITY FOR NEWBORN INFANTS.—Section 1902(e)(4) of the Social Security Act (42 U.S.C. 1396a(e)(4)) is amended by adding at the end thereof the following new sentence: "During the period in which a child is deemed under the preceding sentence to be eligible for medical assistance, the medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all provider claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).".

(g) STUDY AND REPORT ON THE MEDICAL EXPENSES OF FAMILIES WITH CHILDREN WITH SPECIAL HEALTH CARE NEEDS.—The Office of

Technology Assessment shall conduct a study and report to Congress, not later than August 1, 1988, on—

(1) the number of children age 18 and under who have high-cost medical expenses exceeding $25,000 in a single year and who have a chronic illness or disability which results in their being developmentally delayed or in their inability to perform one or more normal childhood activities;

(2) the aggregate medical expenses of such children in a single year;

(3) the medical diagnosis or diagnoses of children incurring such expenses;

(4) the age of such children at the onset of major chronic illnesses or disabilities (and the expected duration of such illness or disabilities);

(5) the sources and extent of payment of such medical expenses;

(6) the insurance status and adequacy of insurance coverage for such children, including out-of-pocket liability;

(7) the relation of such out-of-pocket liability to family adjusted gross income;

(8) the causes of out-of-pocket liability, including uninsured or inadequately insured services, copayments, premiums, deductibles, and changes in insurance coverage over the course of the child's treatment; and

(9) the demographic profile of families with such children, including—

(A) family size and composition, including number of parents and children;

(B) race, age, educational status, employment status, and marital status of parents;

(C) age of each child in the family and total amount of medical expenses for each child with a chronic illness or disability which results in inability to perform a major normal, childhood life activity;

(D) geographic distribution of families with such children; and

(E) impact of the expenses of medical care for such children on family financial stability.

SEC. 4053. WAIVER AUTHORITY UNDER THE MEDICAID PROGRAM FOR THE NORTHERN MARIANA ISLANDS.

Section 1902(j) of the Social Security Act (42 U.S.C. 1396a(j)) is amended—

(1) by inserting "and the Northern Mariana Islands" after "American Samoa" the first place it appears; and

(2) by inserting "or the Northern Mariana Islands" after "American Samoa" the second place it appears.

SEC. 4054. FEDERAL REVIEW OF STATE INSPECTION OF CARE (IOC) DETERMINATIONS.

(a) IN GENERAL.—Section 1903(g)(2) of the Social Security Act (42 U.S.C. 1396b(g)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end thereof the following new subparagraph:

"(B)(i) The Secretary may, in such cases as he finds appropriate, conduct an independent medical review of the care of patients in mental facilities, skilled nursing facilities, or intermediate care facilities, including an assessment of the appropriateness of the State's determination under paragraph (1) of level of care requirements, the adequacy of the services provided, and the State's efforts in communicating deficiencies to the facility and assuring corrective action. If the Secretary finds, following the conduct of an independent medical review, that the State has failed to perform an effective medical review, Federal financial participation shall not be available with respect to care provided by the facility involved for patients for whom and during the period for which the review was found to be ineffective. Where the Secretary's review is based upon sampling procedures, the findings of such review may be projected to all parties similarly situated in the State.

"(ii) For purposes of clause (i), a State's program of medical review of the care of patients referred to therein shall not be considered to be an effective program unless it includes provision, found adequate by the Secretary, for the development of a corrective action plan for each facility with respect to which deficiencies were noted and a description of the steps that will be taken by the State in the case of each such plan that is developed to assure that the facility acts expeditiously to implement such plan and correct the deficiencies addressed therein. The corrective action plan must address both deficiencies in services provided to individual patients and deficiencies of the facility generally.".

(b) UTILIZATION CONTROL PENALTY.—Section 1903(g)(4) of such Act (42 U.S.C. 1396b(g)(4)) is amended by adding at the end the following new subparagraph:

"(C) The Secretary shall not find a showing of a State unsatisfactory, with respect to the requirement to conduct annual onsite inspections in mental hospitals, skilled nursing facilities, and intermediate care facilities under paragraphs (26) and (31) of section 1902(a), for failure to review the care of each person receiving medical assistance (or, as permitted by the Secretary, each person in a sample group of such individuals) where the showing demonstrates, with respect to each institution subject to this requirement, that the State did not fail to meet the requirement with respect to more than—

"(i) (in the case of an institution with more than one, but fewer than fifty-one such patients) the lesser of ten such individuals or two percent of the total number of such individuals in the institution, or

"(ii) (in the case of an institution with fifty or fewer such patients) one individual.".

(c) The amendments made by this section shall become effective on January 1, 1988.

SEC. 4055. PROVISION OF FAMILY PLANNING SERVICES TO INDIVIDUALS ENROLLED WITH A HEALTH MAINTENANCE ORGANIZATION.

(a) STATE PLAN REQUIREMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (46);

(2) by striking the period at the end of paragraph (47) added by section 9407(a) of the Omnibus Budget Reconciliation Act of 1986 and inserting a semicolon and transferring and inserting such paragraph after paragraph (46);

(3) by striking the period at the end of the paragraph (47) added by section 11005(b) of the Anti-Drug Abuse Act of 1986 and inserting "; and", by redesignating such paragraph as paragraph (48), and by transferring and inserting such paragraph after paragraph (47); and

(4) by inserting after paragraph (48) the following new paragraph:

"(49) provide that, notwithstanding any other provision of this title, an individual enrolled with a health maintenance organization under this title shall be permitted to receive family planning services under the plan from any qualified provider.".

(b) CONFORMING AMENDMENT.—Section 1902(e)(2)(A) of such Act (42 U.S.C. 1396a(e)(2)(A)) is amended by striking "but only" and inserting in lieu thereof "but, subject to subsection (a)(49), only".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after the date of enactment of this Act.

SEC. 4056. OPTIONAL MEDICAID COVERAGE OF INDIVIDUALS IN CERTAIN STATES RECEIVING ONLY OPTIONAL STATE SUPPLEMENTARY PAYMENTS.

Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(1) by striking "or" at the end of subclause (IX) and inserting "or" at the end of subclause (X); and

(2) by adding at the end thereof the following new subclause:

"(XI) who receive only an optional State supplementary payment based on need and paid on a regular basis, equal to the difference between the individual's countable income and the income standard used to determine eligibility for such supplementary payment (with countable income being the income remaining after deductions as established by the State), which are available to all individuals in the State (but which may be based on different income standards by political subdivision according to cost of living differences), and which are paid by a State that does not have an agreement with the Secretary under section 1634.".

Subpart VI—Social Services and Income Security

SEC. 4061. INCREASED FUNDING FOR SOCIAL SERVICES BLOCK GRANT; EXTENSION OF SOCIAL SERVICES AND CHILD WELFARE SERVICES TO AMERICAN SAMOA.

(a) INCREASED FUNDING FOR SOCIAL SERVICES BLOCK GRANT.—Section 2003(c) of the Social Security Act (42 U.S.C. 1397b(c)) is amended—

(1) by striking "and" at the end of paragraph (2);

(2) in paragraph (3), by striking "year" the first place it appears and all that follows through the period and inserting in lieu thereof "years 1984, 1985, 1986, and 1987, and each succeeding fiscal year other than the fiscal year 1988; and"; and

(3) by adding at the end thereof the following new paragraph:

"(4) $2,750,000,000 for the fiscal year 1988.".

(b) INCLUSION OF AMERICAN SAMOA IN SOCIAL SERVICES BLOCK GRANT PROGRAM.—

(1) Section 1101(a)(1) of the Social Security Act (42 U.S.C. 1301(a)(1)) is amended in the last sentence by inserting "American Samoa," after "Guam,".

(2)(A) Section 2003(a) of the Social Security Act (42 U.S.C. 1397b(a)) is amended by adding at the end thereof the following new sentence: "The allotment for fiscal year 1988 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.".

(B) Section 2003(b) of such Act (42 U.S.C. 1397b(b)) is amended by inserting "American Samoa," after "the Virgin Islands," each place it appears.

(c) INCLUSION OF AMERICAN SAMOA IN CHILD WELFARE SERVICES PROGRAM.—

(1) Section 1101(a)(1) of such Act (42 U.S.C. 1301(a)(1)) is amended by adding at the end thereof the following new sentence: "Such term when used in part B of title IV also includes American Samoa.".

(2) Section 421(b) of such Act (42 U.S.C. 621(b)) is amended by striking "and Guam" and inserting in lieu thereof "Guam, and American Samoa".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 1987.

SEC. 4062. 2-YEAR EXTENSION OF FOSTER CARE CEILING AND OF AUTHORITY TO TRANSFER FOSTER CARE FUNDS TO CHILD WELFARE SERVICES.

(a) IN GENERAL.—Section 474 of the Social Security Act (42 U.S.C. 674) is amended—

(1) in paragraphs (1), (2)(A)(iii), (2)(B), (4)(B), and (5)(A)(ii) of subsection (b), by striking out "through 1987" and inserting in lieu thereof "through 1989";

(2) in paragraph (5)(A) of subsection (b) (in the matter preceding clause (i)), by striking out "October 1, 1987" and inserting in lieu thereof "October 1, 1989"; and

(3) in paragraphs (1) and (2) of subsection (c), by striking out "through 1987" and inserting in lieu thereof "through 1989".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on October 1, 1987.

SEC. 4063. PERMANENT EXTENSION OF AUTHORITY FOR VOLUNTARY FOSTER CARE PLACEMENTS.

(a) Section 102 of the Adoption Assistance and Child Welfare Act of 1980 is amended—

(1) in subsection (a)(1) (in the matter preceding subparagraph (A)), by striking out "and before October 1, 1987,";

(2) in subsection (c), by striking out all that follows "September 30, 1979" and inserting in lieu thereof a period; and

(3) in subsection (e), by striking "with respect to which the amendments made by this section are in effect".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on October 1, 1987.

SEC. 4064. MOTHER/INFANT FOSTER CARE.

(a) IN GENERAL.—Section 475(4) of the Social Security Act (42 U.S.C. 675(4)) is amended—

(1) by inserting "(A)" after "(4)"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) In cases where—

"(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

"(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.".

(b) CONFORMING AMENDMENTS RELATING TO ELIGIBILITY UNDER OTHER PROGRAMS.—

(1) Section 402(a)(24) of such Act (42 U.S.C. 602(a)(24)) is amended by striking "if an individual is receiving benefits under title XVI, then, for the period for which such benefits are received," and inserting in lieu thereof the following: "if an individual is receiving benefits under title XVI or his costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 475(4)(B), then, for the period for which such benefits are received or such costs are so covered,".

(2) Section 472(h) of such Act (42 U.S.C. 672(h)) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are made under this section.".

(3)(A) Section 473(a)(2)(A) of such Act (42 U.S.C. 673(a)(2)(A)) is amended—

(i) by striking "or" at the end of clause (i);

(ii) by adding "or" at the end of clause (ii); and

(iii) by adding after clause (ii) the following new clause:

"(iii) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 475(4)(B),".

(B) Section 473(a)(2)(B)(iii) of such Act (42 U.S.C. 673(a)(2)(B)(iii)) is amended by inserting "or (A)(iii)" after "(A)(ii)".

(4) Section 473(b) of such Act (42 U.S.C. 673(b)) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are being made under section 472.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4065. INCREASE IN PERSONAL NEEDS ALLOWANCE FOR SSI RECIPIENTS.

(a) INCREASE IN STANDARD.—Section 1611(e)(1)(B) of the Social Security Act (42 U.S.C. 1382(e)(1)(B)) is amended—

(1) by striking "$300 per year" in clauses (i) and (ii)(I) and inserting "$360 per year"; and

(2) by striking "$600 per year" in clause (iii) and inserting "$720 per year".

(b) MANDATORY PASS-THROUGH OF INCREASED PERSONAL NEEDS ALLOWANCE.—Section 1618 of such Act is amended by adding at the end the following new subsection:

"(g) In order for any State which makes supplementary payments of the type described in section 1616(a) (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66) to recipients of benefits determined under section 1611(e)(1)(B), on or after October 1, 1987, to be eligible for payments pursuant to title XIX with respect to any calendar quarter which begins—

"(1) after October 1, 1987, or, if later

"(2) after the calendar quarter in which it first makes such supplementary payments to recipients of benefits so determined,

such State must have in effect an agreement with the Secretary whereby the State will—

"(3) continue to make such supplementary payments to recipients of benefits so determined, and

"(4) maintain such supplementary payments to recipients of benefits so determined at levels which assure (with respect to any particular month beginning with the month in which this subsection is first effective) that—

"(A) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1611(e)(1)(B) for that particular month, is not less than—

"(B) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1611(e)(1)(B) for October 1987 (or, if no such supplementary payments were made for that month, the combined level for the first subsequent month for which such payments were made), increased—

"(i) in a case to which clause (i) of such section 1611(e)(1)(B) applies or (with respect to the individual or spouse who is in the hospital, home, or facility involved) to which clause (ii) of such section applies, by $5, and

"(ii) in a case to which clause (iii) of such section 1611(e)(1)(B) applies, by $10.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective on July 1, 1988.

SEC. 4066. INCREASE IN SSI EMERGENCY ADVANCE PAYMENTS.

(a) IN GENERAL.—Section 1631(a)(4)(A) of the Social Security Act (42 U.S.C. 1383(a)(4)(A)) is amended by striking "a cash advance against such benefits in an amount not exceeding $100" and inserting in lieu thereof "a cash advance against such benefits, including any federally administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4067. AUTHORITY OF SECRETARY TO SUSPEND PENALTY FOR TRANSFERRING ASSETS FOR LESS THAN FAIR MARKET VALUE.

(a) IN GENERAL.—Section 1613(c) of the Social Security Act (42 U.S.C. 1382b(c)) is amended—

(1) by inserting immediately after "the exclusions under subsection (a)" in paragraph (1) the following: "and subject to paragraph (4) of this subsection"; and

(2) by adding at the end thereof the following new paragraph:

"(4) The Secretary shall by regulation provide for suspending the application of paragraph (1) to the extent (in any instance) that the Secretary determines that such suspension is necessary to avoid undue hardship.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4068. DISREGARD OF AFDC UNDER SSI RETROSPECTIVE ACCOUNTING.

(a) IN GENERAL.—Section 1612(b)(6) of the Social Security Act (42 U.S.C. 1382a(b)(6)) is amended by striking "assistance" and inserting in lieu thereof "payments of aid to families with dependent children under a State plan approved under section 402, and assistance".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4069. EXCLUSION OF REAL PROPERTY WHEN IT CANNOT BE SOLD.

(a) IN GENERAL.—Section 1613(b) of the Social Security Act (42 U.S.C. 1382b(a)) is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding the provisions of paragraph (1), the Secretary shall not require the disposition of any real property for so long as it cannot be sold because (i) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (ii) its sale is barred by a legal impediment, or (iii) as determined under regulations issued by the Secretary, the owner's reasonable efforts to sell it have been unsuccessful.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4070. EXCLUSION OF INTEREST ON BURIAL ACCOUNTS.

(a) IN GENERAL.—Section 1613(d) of the Social Security Act (42 U.S.C. 1382b(d)) is amended—

(1) in paragraph (1), by striking "(if" and all that follows and inserting in lieu thereof a period; and

(2) in paragraph (3), by striking "aside" and inserting in lieu thereof "aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1611(a)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4071. PERMANENT EXTENSION OF DISREGARD OF IN-KIND ASSISTANCE TO SSI AND AFDC RECIPIENTS.

(a) IN GENERAL.—Section 2639(d) of the Deficit Reduction Act of 1984 is amended by striking "; but" and all that follows and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of the Deficit Reduction Act of 1984.

SEC. 4072. EXCLUSION OF DEATH BENEFITS TO THE EXTENT SPENT ON LAST ILLNESS AND BURIAL.

(a) IN GENERAL.—Subparagraphs (D) and (E) of section 1612(a)(2) of the Social Security Act (42 U.S.C. 1382a(a)(2)) are amended to read as follows:

"(D) payments to the individual occasioned by the death of another person, to the extent that the total of such payments exceeds the amount expended by such individual for purposes of the deceased person's last illness and burial;

"(E) support and alimony payments, and (subject to the provisions of subparagraph (D) excluding certain amounts expended for purposes of a last illness and burial) gifts (cash or otherwise) and inheritances; and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4073. CONTINUATION OF FULL BENEFIT STANDARD FOR INDIVIDUALS TEMPORARILY INSTITUTIONALIZED.

(a) IN GENERAL.—Section 1611(e)(1) of the Social Security Act (42 U.S.C. 1382(e)(1)) is amended—

(1) in subparagraph (A), by striking "and (E)" and inserting in lieu thereof "(E), and (G)";

(2) in subparagraph (B), by inserting in lieu thereof "(subject to subparagraph (G))" after "throughout any month"; and

(3) by adding at the end thereof the following new subparagraphs:

"(G) A person may be an eligible individual or eligible spouse for purposes of this title, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, or is in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX, if it is determined in accordance with subparagraph (G) that—

"(i) such person's stay in that institution or facility (or in that institution or facility and one or more other such institutions or facilities during a continuous period of institutionalization) is likely (as certified by a physician) not to exceed 3 months, and the particular month involved is one of the first 3 months throughout which such person is in such an institution or facility during a continuous period of institutionalization; and

"(ii) such person needs to continue to maintain and provide for the expenses of the home or living arrangement to which he or she may return upon leaving the institution or facility.

The benefit of any person under this title (including State supplementation if any) for each month to which this subparagraph applies shall be payable, without interruption of benefit payments and on the date the benefit involved is regularly due, at the rate that was applicable to such person in the month prior to the first month throughout which he or she is in the institution or facility.

"(H) The Secretary shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies and organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.".

(b) CONFORMING AMENDMENT.—Section 1902(l) of such Act (42 U.S.C. 1396a(l)) is amended by striking "1611(e)(1)(E)" and inserting "subparagraph (E) or (G) of section 1611(e)(1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on July 1, 1988.

SEC. 4074. TREATMENT OF CERTAIN COUPLES IN MEDICAL INSTITUTIONS.

(a) IN GENERAL.—Section 9 of Public Law 99-643 is amended—

(1) by striking "sharing a room or comparable accommodation in a" and inserting "living in the same"; and

(2) by striking "shared such a room or accommodation" and inserting "lived in the same such hospital, home, or facility".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4075. EXTENDING FROM 3 TO 6 THE NUMBER OF MONTHS THAT AN INDIVIDUAL IN A PUBLIC EMERGENCY SHELTER CAN BE ELIGIBLE FOR SSI.

(a) IN GENERAL.—Section 1611(e)(1)(D) of the Social Security Act (42 U.S.C. 1382(e)(1)(D)) is amended by striking "three months in any 12-month period" and inserting in lieu thereof "6 months in any 9-month period".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4076. SPECIAL NOTICE TO BLIND SSI RECIPIENTS.

(a) IN GENERAL.—

(1) Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by adding at the end the following new subsection:

"Special Notice to Blind Individuals with Respect to Hearings and Other Official Actions

"(l)(1) In any case where an individual who is applying for or receiving benefits under this title on the basis of blindness is entitled (under subsection (c) or otherwise) to receive notice from the Secretary of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this title, such individual shall at his or her election be entitled (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Secretary and agreed to by the individual.

"(2) The election under paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this title on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this title until such time as it is revoked or changed.".

(2) Not later than one year after the date on which the amendment made by paragraph (1) becomes effective, the Secretary of Health and Human Services shall provide every individual receiving benefits under title XVI of the Social Security Act on the basis of blindness an opportunity to make the election under section 1631(l)(1) of such Act (as added by such amendment).

(b) STUDY.—The Secretary of Health and Human Services shall study the desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by section 1631(l) of the Social Security Act (as added by subsection (a) of this section) to other individuals who may lack the ability to read and comprehend regular written notices, and shall report the results of such study to the Congress, along with such recommendations as may be appropriate, within 12 months after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4077. REHABILITATION SERVICES FOR BLIND SSI RECIPIENTS.

(a) IN GENERAL.—Section 1631(a)(6) of the Social Security Act (42 U.S.C. 1383(a)(6)) is amended—

(1) by inserting "blindness (as determined under section 1614(a)(2)) or" before "disability (as determined under section 1614(a)(3))";

(2) by inserting "blindness or other" before "physical or mental impairment"; and

(3) by inserting "blindness and" before "disability benefit rolls" in subparagraph (B).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4078. RETENTION OF MEDICAID WHEN SSI BENEFITS ARE LOST UPON ENTITLEMENT TO EARLY WIDOW'S OR WIDOWER'S INSURANCE BENEFITS.

(a) IN GENERAL.—Section 1634 of the Social Security Act (42 U.S.C. 1383c) is amended by adding at the end thereof the following new subsection:

"(d) If any person—

"(1) applies for and obtains benefits under subsection (e) or (f) of section 202 (or under any other subsection of section 202 if such person is also eligible for benefits under such subsection (e) or (f)) as required by subsection 1611(e)(2), being then at least 60 years of age but not entitled to hospital insurance benefits under part A of title XVIII, and

"(2) is determined to be ineligible (by reason of the receipt of such benefits under section 202) for supplemental security income benefits under this title or for State supplementary payments of the type described in section 1616(a),

such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this title for purposes of title XIX, so long as he or she (A) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 202, and (B) is not entitled to hospital insurance benefits under part A of title XVIII.".

(b) Notice.—The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act) issue a notice to all individuals who have attained age 60 but not age 65 as of October 1, 1987, and who received supplemental security income benefits under title XVI of the Social Security Act prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act as added by subsection (a) of this section) under title II of that Act. Each such notice shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX.

(c) State Determinations.—Any determination required under section 1634(d) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act (or State supplementary payments) in the absence of benefits under section 202 shall be made by the appropriate State agency.

(d) Conforming Amendments.—Section 1921(a)(2) of such Act (42 U.S.C. 1396s(a)(2)) is amended—

(1) by striking "1634" in the second subparagraph (B) and inserting in lieu thereof "1634(c)"; and

(2) by adding at the end the following new subparagraph:

"(D) Section 1634(d) of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's insurance benefits under section 202(e) or (f) of this Act).".

(e) Effective Date.—The amendments made by subsection (a) shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security Act (as described in section 1634(d)(2) of such Act) occurred before, on, or after the date of the enactment of this Act; but no individual shall be eligible for assistance under title XIX of such Act by reason of such amendments for any period before the first day of the second calendar quarter to begin after the date of enactment of this Act.

SEC. 4079. EXTENSION OF DEADLINE FOR DISABLED WIDOWS AND WIDOWERS TO APPLY FOR MEDICAID PROTECTION.

Section 1634(b)(3) of the Social Security Act (42 U.S.C. 1383c(b)(3)) is amended by striking "during the 15-month period beginning with the month in which this subsection is enacted" and inserting "no later than July 1, 1988".

PART B—OTHER PROVISIONS

Subpart I—Medicare Provisions

SEC. 4081. HOME HEALTH AND SKILLED NURSING FACILITY PROVISIONS.

(a) Home Health Toll-Free Hotline and Investigative Unit.—

(1) Section 1864(a) of the Social Security Act (42 U.S.C. 1395aa(a)) is amended by adding at the end thereof the following:

"Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that are certified to participate in the program established under this title (which information shall include any significant deficiencies found with respect to patient care in the most recent certification survey conducted with respect to the agency, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions, if any, imposed under this title with respect to the agency) and (2) to receive complaints (and answer questions) with respect to home health agencies in the State or locality. Any such agreement shall provide for such agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to consumer medical records and survey reports.".

(2) The amendment made by paragraph (1) shall apply with respect to agreements entered into or renewed on or after the date of enactment of this Act.

(b) PUBLICATION OF POLICIES.—

(1) IN GENERAL.—Section 1871 of the Social Security Act (42 U.S.C. 1395hh) is amended by adding at the end thereof the following new subsection:

"(c)(1) Effective June 1, 1988, each fiscal intermediary and carrier administering claims for extended care, post-hospital extended care, home health care, and durable medical equipment benefits under this title shall make available to the public all interpretative materials, guidelines, and clarifications of policies which relate to payments for such benefits.

"(2) Effective June 1, 1988, the Secretary shall publish in the Federal Register, not less frequently than every three months, a list indicating the subject matter of all such new home health care, extend care, post-hospital extended care, and durable medical equipment coverage instructions and clarifications that have been furnished in the preceeding 3 months to fiscal intermediaries, carriers or service providers, as well as interpretative rules, and statements of policy or changes therein, issued or used by the Secretary, and by fiscal intermediaries or carriers.

"(3) The Secretary shall only change policies or establish standards for payment under this title, and the Secretary or his fiscal intermediaries or carriers shall only issue additional instructions, clarifications, rules, statements, and guidelines for extended care, post-hospital extended care, home health care, or durable medical equipment by written statement, made available to all affected fiscal intermediaries, carriers, and service providers (and to the Secretary when such additional statement is made by a fiscal intermediary or carrier). Any such statement shall only have effect with respect to claims submitted 30 days after its full text has been made available pursuant to paragraph (2).

"(4) The Secretary shall ensure that the practices of fiscal intermediaries and carriers regarding payments under this title are consistent with each other and, to the maximum extent possible, are clearly understood by service providers and beneficiaries. The Secretary, shall periodically consult with representatives of beneficiaries, service providers, fiscal intermediaries and carriers, shall update, and clarify, as necessary, existing policies regarding skilled nursing and home health care to meet such goals.

"(5)(a) The Secretary shall to the extent feasible make such changes in automated data collection and retrieval by the Secretary and his fiscal intermediaries as are necessary to make easily accessible for the Secretary and other appropriate parties a data base which fairly and accurately reflects the provision of extended care, post-hospital extended care and home health care benefits pursuant to this title, including such categories as benefit denials, results of appeals, and other relevant factors, and selectable by such categories and by fiscal intermediary, service provider, and region.".

(2) REPORT.—Not later than six months after the date of enactment of this Act, the Secretary shall report to Congress on the feasibility of including in the data base required under section 1871(c)(5) of the Social Security Act, as added by the amendment made by paragraph (1) diagnoses (or groups of them), length of coverage, and reimbursements.

(c) CONDITIONS OF PARTICIPATION AND SURVEY PROCESS FOR HOME HEALTH AGENCIES.—

(1)(A) Section 1861(o)(6) of the Social Security Act (42 U.S.C. 1395x(o)(6)) is amended by inserting "the conditions of participation specified in section 1892(a) and" after "meets".

(B) Title XVIII is amended by adding at the end thereof the following new section:

"CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES; HOME HEALTH QUALITY

"SEC. 1892. (a) The conditions of participation that a home health agency is required to meet under this subsection are as follows:

"(1) The agency protects and promotes the rights of each individual under its care, including each of the following rights:

"(A) The right to be fully informed about care and treatment, to participate (where appropriate) in planning care and treatment, and to be fully informed in advance of any changes in care or treatment that may affect the individual's well-being.

"(B) The right to voice grievances with respect to treatment or care that is (or fails to be) furnished without suffering discrimination or reprisal.

"(C) The right to have one's property treated with respect.

"(D) The right to be informed orally and in writing (in advance of coming under the care of the agency) of—

"(i) all items and services furnished by (or under arrangements with) the agency for which payment may be made under this title,

"(ii) the coverage available for such items and services under this title, title XIX, and any other Federal program of which the agency is reasonably aware, and "(iii) any charges the individual may have to pay with respect to items and services furnished by (or under arrangements with) the agency.

"(2)(A) The agency promptly provides the State entity responsible for the licensing of such agency with the name and social security account number of any individual hired by the agency to provide care and discloses to such entity whether such individual has ever been convicted of a felony.

"(B) The agency promptly informs such entity of a change in the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the agency.

"(3) The agency only provides items and services described in section 1861(m) (except for medical supplies and durable medical equipment) on or after October 1, 1989, through persons who are licensed health professionals or have successfully completed or are enrolled in and making timely progress in completing a training program that meets minimum standards established by the Secretary. The Secretary shall ensure that durable medical equipment suppliers are properly trained in the demonstration and use of the equipment that they supply to home health agencies. The Secretary shall establish such standards not later than July 1, 1988.

"(4) The clinical records described in section 1861(o)(3) with respect to an individual include the individual's plan of care required under section 1861(m).

"(5) The agency operates and provides services in compliance with all applicable Federal, State, and local laws and regulations and with all accepted professional standards and principles.

"(b) It is the responsibility of the Secretary to assure that the conditions of participation and requirements specified in or pursuant to section 1861(o) are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient operation of the program.".

(C) Except as otherwise provided, the amendments made by this paragraph shall apply to home health agencies as of the first day of the eighteenth calendar month that begins after the date of enactment of this Act.

(2)(A) Section 1892 (as added by paragraph (1)) is amended by adding at the end thereof the following new subsections:

"(c)(1) Any agreement entered into or renewed by the Secretary pursuant to section 1864 relating to home health agencies shall provide that the appropriate State or local agency shall conduct a standard survey of each home health agency.

"(2)(A) Except as provided in subparagraph (B), the standard survey shall be conducted with respect to each home health agency not earlier than 9 months and not later than 15 months after the date of the most recently completed survey conducted with respect to that agency.

"(B) In addition to a standard survey conducted under subparagraph (A), a standard survey of an agency shall be promptly conducted upon—

"(i) a change of ownership of the agency, or "(ii) a significant number of complaints with respect to the agency.

"(C) A standard survey conducted under this paragraph with respect to a home health agency—

"(i) may be made with or without advance notice,

"(ii) not later than January 1, 1990, shall include visits to a sample of the homes of individuals furnished items and services by the agency (but only with the consent of such individuals) for the purpose of evaluating (in accordance with a standardized reproducible assessment approved by the Secretary under subsection (d)) the extent to which the quality and scope of services furnished improved or maintained the functional capacity of such individuals,

"(iii) shall evaluate—

"(I) the quality of care and services furnished by the agency, and

"(II) the agency's observance of rights specified in or pursuant to section 1861(o),

"(iv) shall be based upon a protocol that is developed, tested, and validated by the Secretary not later than July 1, 1989, and

"(v) shall be conducted by an individual—

"(I) who meets minimum qualifications established by the Secretary not later than July 1, 1989, and

"(II) who has not, during the two-year period prior to the survey, served as a consultant to a home health agency with respect to such agency's compliance with any condition of participation specified in or pursuant to section 1861(o).

"(D) Each home health agency that is found, under a standard survey, to have performed poorly with regard to measures of compliance with any condition of participation specified in or pursuant to section 1861(o) shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey.".

"(d)(1) Not later than April 1, 1990, the Secretary shall designate an instrument (or instruments) for use by an agency conducting surveys pursuant to subsection (c).

"(2)(A) Not later than January 1, 1992, the Secretary shall—

"(i) evaluate the assessment process,

"(ii) report to Congress on the results of such evaluation, and

"(iii) based on such evaluation, make such modifications in the assessment process as the Secretary determines are appropriate.

"(B) The Secretary shall periodically update the evaluation conducted under subparagraph (A), report the results of such update to Congress, and, based on such update, make such modifications in the assessment process as the Secretary determines are appropriate.

"(3) The Secretary shall provide for the training of State and Federal surveyors in the use of any assessment instrument designated under paragraph (1).".

(B) The amendment made by subparagraph (A) shall become effective on the first day of the eighteenth calendar month to begin after the date of enactment of this Act.

(3) Section 1892 (as added by paragraph (1) and amended by paragraph (2)) is further amended by adding at the end thereof the following new subsections:

"(e) The Secretary shall develop and implement criteria and procedures for the evaluation of plans of correction submitted by home health agencies that are found not to meet the conditions of participation and requirements specified in or pursuant to section 1861(o). Such criteria and procedures shall be designed to—

"(1) maximize specificity in the plans submitted, and

"(2) assure that corrections are made by an agency in accordance with a timetable approved by the Secretary.

"(f) If the Secretary determines that—

"(1) a home health agency that is certified for participation under this title—

"(A) no longer substantially meets the conditions of participation specified in or pursuant to section 1861(o), or

"(B) has failed to correct a deficiency in accordance with a timetable approved by the Secretary pursuant to subsection (e)(2), and

"(2) the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services,

the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (g), in lieu of canceling immediately the certification of the agency.

"(g)(1) The Secretary shall develop and implement—

"(A) a range of intermediate sanctions to apply to home health agencies under the conditions described in subsection (f), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) civil fines and penalties, and

"(ii) suspension of all or part of the payments to which a home health agency would otherwise be entitled under this title with respect to items and services furnished by a home health agency on or after the date in which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (f).

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

"(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any fines, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(B) The amendment made by subparagraph (A) shall become effective on the first day of the eighteenth calendar month to begin after the date of enactment of this Act.

(d) DENIALS AND RECONSIDERATIONS.—

(1) Section 1816 of the Social Security Act (42 U.S.C. 1395h) is amended by adding at the end thereof the following new subsection:

"(j) An agreement with an agency or organization under this section shall require that, with respect to a claim for home health services, extended care services, or post-hospital extended care services submitted by a provider to such agency or organization that is denied, such agency or organization—

"(1) furnish the provider and the individual with respect to whom the claim is made with a written explanation of the denial and of the statutory or regulatory basis for the denial;

"(2) with respect to any claim that is denied on the ground that the service is not medically necessary, ensure that if such individual (or the provider on behalf of the individual) seeks reconsideration of the denial, the denial is reviewed by a physician (if available, a physician with expertise in geriatrics); and

"(3) promptly notify such individual and the provider of disposition of such reconsideration.".

(2)(A) Section 1816(f) of such Act (42 U.S.C. 1395h(f)) is amended by adding at the end thereof the following: "Such standards and criteria shall include with respect to home health, extended care, and post-hospital extended care claims whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.".

(2) Section 1842(b) of such Act (42 U.S.C. 1395u(b)) is amended by adding at the end thereof the following: "Such standards and criteria shall include with respect to durable medical equipment whether such carrier is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.".

(3)(A) The amendment made by paragraph (1) shall apply with respect to claims received on or after January 1, 1988.

(B) The amendments made by paragraph (2) shall apply with respect to claims filed on or after October 1, 1988.

(2) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 and contracts under section 1842 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendments made by paragraphs (1) and (2) on a timely basis.

(e) MORATORIUM ON PRIOR AUTHORIZATION FOR HOME HEALTH AND POST-HOSPITAL EXTENDED CARE SERVICES.—The Secretary of Health and Human Services shall not implement any voluntary or mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under part A or B of title XVIII of the Social Security Act at any time prior to six months after the date on which the Congress receives the report required under section 9305(k)(4) of the Omnibus Budget Reconciliation Act of 1986.

(f) FISCAL INTERMEDIARY CONSULTATION REQUIREMENT.—

(1) Section 1816 of such Act, as amended by subsection (d), is further amended by adding at the end thereof the following new subsection:

"(k) An agreement with an agency or organization under this section shall require that the agency or organization implement a mechanism for consulting (at least once annually) with representatives of home health and post-hospital extended care and extended care service providers in the region, beneficiaries of services furnished by such providers, and appropriate personnel in the Health Care Financing Administration with respect to problems of claim review, coverage guidelines, reconsiderations, payments, and other activities of the agency or organization.".

(2)(A) The amendment made by paragraph (1) shall become effective on January 1, 1988.

(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendments made by paragraph (1) on a timely basis.

(g) DELAY IN PUBLISHING REGULATIONS WITH RESPECT TO DEEMING THE STATUS OF HOME HEALTH AGENCIES.—The Secretary of Health and Human Services shall not publish final regulations providing that for the purposes of title XVIII of the Social Security Act, an entity may be deemed to be a home health agency on the ground that it has been certified by a private accreditation entity, on a date earlier than 6 months after the date on which proposed regulations are published with respect to the deeming of such agencies.

(h) HOME HEALTH PROSPECTIVE PAYMENT STUDY AND DEMONSTRATION.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall conduct a study of and demonstration to test alternative methods of paying home health agencies on a prospective basis for services furnished under title XVIII of the Social Security Act. The study and demonstration shall be designed to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, access to and quality of, home health care and operations of home health agencies, and shall provide all necessary data for determining a prospective rate or rates for any such method and for determining whether application of a particular method allows for payment under such title on a budget-neutral basis.

(2) The study under paragraph (1) shall account for—

(A) the special needs of sole community home health agencies and new home health agencies;

(B) extraordinary circumstances beyond the control of home health agencies (such as significant fluctuations in population and unusual labor costs);

(C) the need to minimize administrative and financial reporting requirements to reduce program costs;

(D) variations in severity of illness and case complexity that cannot be adequately accounted for by the various methods considered under subsection (a); and

(E) increases in wages and the cost of goods and services included in the cost of providing home health services.

(3) The amount paid for home health services under the demonstration conducted under this subsection shall be no greater than the amount (as determined by the Secretary) that would have been paid for such services under title XVIII of the Social Security Act in the absence of the demonstration.

(4)(A) Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to the Congress an interim report on the progress of the demonstration under paragraph (1).

(B) Not later than July 1, 1990, the Secretary shall submit to the Congress specific legislative proposals based on the results of the study under paragraph (1).

(i) STUDY OF ADJUSTMENTS TO HOME HEALTH AGENCY COST LIMITS.—The Secretary of Health and Human Services shall study and report to the Congress, not later than June 1, 1988, on—

(1) whether the separate schedules of cost limits currently applied to home health agencies under title XVIII of the Social Security Act located in urban and rural areas accurately reflect differences in the costs of urban and rural home health agencies, and

(2) the appropriateness of modifying such limits to take into account the proportion of agency patients who are from urban and rural areas.

(j) BENEFICIARY NOTIFICATION.—

(1) Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as "the Secretary") shall develop and distribute to each provider with an agreement under section 1866 of the Social Security Act and to each agency or organization with an agreement under section 1816 of such Act a standard form that is periodically updated (as appropriate) and contains a description of—

(A) rights and conditions of coverage with respect to home health services, post-hospital extended care services, and extended care services furnished under title XVIII of such Act;

(B) rights to appeal a coverage determination under such title where the provider of such services decides not to submit a claim on behalf of the beneficiary;

(C) the right to appeal (directly or through the provider) the denial of a claim by an agency or organization pursuant to section 1816 of such Act; and

(D) the practical steps required for initiating appeals described in subparagraphs (B) and (C) (including sources of legal assistance).

(2) The Secretary shall take appropriate steps to ensure that—

(A) each provider with an agreement under section 1866 of the Social Security Act makes the standard document (as updated) distributed under paragraph (1) available to any individual covered under the insurance program under part A of title XVIII of such Act at any time such individual requests home health services, post-hospital extended care services, or extended care services through the provider; and

(B) each agency or organization with an agreement under section 1816 of such Act makes such document available to any such individual at any time the agency or organization makes a determination regarding home health services, post-hospital extended care services, or extended care services furnished such individual with respect to which the individual may appeal.

SEC. 4082. OFFICE OF RURAL HEALTH POLICY.

Title VII of the Social Security Act is amended by adding at the end thereof the following new section:

"OFFICE OF RURAL HEALTH POLICY

"SEC. 711. (a) There shall be established in the Department of Health and Human Services (in this section referred to as the "Department") an Office of Rural Health Policy (in this section referred to as the 'Office'). The Office shall be headed by a Director, who shall advise the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under titles XVIII and XIX on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas.

"(b) In addition to advising the Secretary with respect to the matters specified in subsection (a), the Director, through the Office, shall—

"(1) oversee compliance with the requirements of section 1102(b) of this Act and section 4083 of the Omnibus Budget Reconciliation Act of 1987,

"(2) establish and maintain a clearinghouse for collecting and disseminating information on—

"(A) rural health care issues,

"(B) research findings relating to rural health care, and

"(C) innovative approaches to the delivery of health care in rural areas,

"(3) coordinate the activities within the Department that relate to rural health care, and

"(4) provide information to the Secretary and others in the Department with respect to the activities, of other Federal departments and agencies, that relate to rural health care.".

SEC. 4083. SET ASIDE FOR EXPERIMENTS AND DEMONSTRATION PROJECTS RELATING TO RURAL HEALTH CARE ISSUES.

(a) SET ASIDE.—Not less than ten percent of the total amounts expended in each fiscal year by the Secretary of Health and Human Services (in this section referred to as the "Secretary") after October 1, 1988, with respect to experiments and demonstration projects authorized by section 402 of the Social Security Amendments of

1967 and the experiments and demonstration projects authorized by the Social Security Amendments of 1972 shall be expended for experiments and demonstration projects relating exclusively or substantially to rural health issues, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of small rural hospitals, the effect of medicare payment policies on the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, the appropriateness of medicare conditions of participation and staffing requirements for small rural hospitals, and the impact of medicare policies on access to (and the quality of) health care in rural areas.

(b) Agenda.—The Secretary of Health and Human Services shall establish an agenda of experiments and demonstration projects, relating exclusively or substantially to rural health issues, that are in progress or have been proposed, and shall include such agenda in the annual report submitted pursuant to section 1875(b) of the Social Security Act. The agenda shall be accompanied by a statement setting forth the amounts that have been obligated and expended with respect to such experiments and projects in the current and most recently completed fiscal years.

SEC. 4084. TECHNICAL AMENDMENTS RELATED TO CERTIFIED REGISTERED NURSE ANESTHETISTS.

(a) In General.—Section 1833(l) of the Social Security Act (42 U.S.C. 1395l(l)), as added by section 9320(e) of the Omnibus Budget Reconciliation Act of 1986, is amended—

(1) in paragraph (2), by striking "1985" and inserting in lieu thereof "1985 and such other data as the Secretary determines necessary"; and

(2) in paragraph (5)(A), by striking "or group practice" each place it appears and inserting in lieu thereof "group practice, or ambulatory surgical center".

(b) Effective Date.—The amendments made by subsection (a) shall apply as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4085. DEMONSTRATION PROJECTS TO PROVIDE PAYMENT ON A PREPAID, CAPITATED BASIS FOR COMMUNITY NURSING AND AMBULATORY CARE FURNISHED TO MEDICARE BENEFICIARIES.

(a) In General.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with not less than four eligible organizations submitting applications under this section to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area served by the organization and enrolls with such organization (in accordance with subsection (c)(2)).

(b) Definitions of Community Nursing and Ambulatory Care and Eligible Organization.—As used in this section:

(1) The term 'community nursing and ambulatory care' means the following services:

(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses.

(B) Physical, occupational, or speech therapy.

(C) Social and related services supportive of a plan of ambulatory care.

(D) Part-time or intermittent services of a home health aide.

(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

(F) Medical and other health services described in paragraphs (2)(H)(ii) and (5) through (9) of section 1861(s) of the Social Security Act.

(G) Rural health clinic services described in section 1861(aa)(1)(C) of such Act.

(H) Certain other related services listed in section 1915(c)(4)(B) of such Act to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

(2) The term 'eligible organization' means a public or private entity, organized under the laws of any State, which meets the following requirements:

(A) The entity (or a division or part of such entity) is primarily engaged in the direct provision of community nursing and ambulatory care.

(B) The entity provides directly, or through arrangements with other qualified personnel, the services described in paragraph (1).

(C) The entity provides that all nursing care (including services of home health aids) is furnished by or under the supervision of a registered nurse.

(D) The entity provides that all services are furnished by qualified staff and are coordinated by a registered professional nurse.

(E) The entity has policies governing the furnishing of community nursing and ambulatory care that are developed by registered professional nurses in cooperation with (as appropriate) other professionals.

(F) The entity maintains clinical records on all patients.

(G) The entity has protocols and procedures to assure, when appropriate, timely referral to or consultation with other health care providers or professionals.

(H) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

(I) The site where the entity provides directly, or through other qualified personnel, nursing and ambulatory care is located in an area designated by the Secretary as a health manpower shortage area.

(J) The requirements of subparagraphs (B), (D), and (E) of section 1876(b)(2) of the Social Security Act.

(c) AGREEMENTS WITH ELIGIBLE ORGANIZATIONS TO CONDUCT DEMONSTRATION PROJECTS.—

(1) The Secretary may not enter into an agreement with an eligible organization to conduct a demonstration project under this section unless the organization meets the requirements of this subsection and subsection (d) with respect to members enrolled with the organization under this section.

(2) The organization shall have an open enrollment period for the enrollment of individuals under this section. The duration of such period of enrollment and any other requirement pertaining to enrollment or termination of enrollment shall be specified in the agreement with the organization.

(3) The organization must provide to members enrolled with the organization under this section, through providers and other persons that meet the applicable requirements of titles XVIII and XIX of the Social Security Act, community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered.

(4) The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each individual enrolled with the organization under this section, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

(5) Section 1876(c)(5) of the Social Security Act shall apply to organizations under this section in the same manner as it applies to organizations under section 1876 of such Act.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals under the demonstration project conducted under this section, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

(d) Determination of Per Capita Payment Rates.—

(1) The Secretary shall determine for each 12-month period in which a demonstration project is conducted under this section, and shall announce (in a manner intended to provide notice to interested parties) not later than three months before the beginning of such period, with respect to each eligible organization conducting a demonstration project under this section, a per capita rate of payment for each class of individuals who are enrolled with such organization who are entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act.

(2)(A) Except as provided in paragraph (3), the per capita rate of payment under paragraph (1) shall be determined in accordance with this paragraph.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The per capita rate of payment under paragraph (1) for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in subparagraph (D)) for that class.

(D) For purposes of subparagraph (C), the term "adjusted average per capita cost" means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B of title XVIII of the Social Security Act and types of expenses otherwise reimbursable under such parts A and B which are described in subparagraphs (A) through (G) of subsection (b)(1) (including administrative costs incurred by organizations described in sections 1816 and 1842 of such Act), if the services were to be furnished by other than an eligible organization.

(3) The Secretary shall, in consultation with providers, health policy experts, and consumer groups develop capitation-based reimbursement rates for such classes of individuals entitled to benefits under part A and enrolled under part B of the Social Security Act as the Secretary shall determine. Such rates shall be applied in determining per capita rates of payment under paragraph (1) with respect to at least one eligible organization conducting a demonstration project under this section.

(4)(A) In the case of an eligible organization conducting a demonstration project under this section, the Secretary shall make monthly payments in advance and in accordance with the rate determined under paragraph (2) or (3), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization.

(B) The amount of payment under paragraph (2) or (3) may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B of the Social Security Act shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under such Act in such proportions from each such trust fund as the Secretary deems to be fair and equitable taking into consideration benefits attributable to such parts A and B, respectively.

(6) During any period in which an individual is enrolled with an eligible organization conducting a demonstration project under this section, only the eligible organization (and no other

individual or person) shall be entitled to receive payments from the Secretary under this title for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

(e) RESTRICTION ON PREMIUMS, DEDUCTIBLES, COPAYMENTS, AND COINSURANCE.—

(1) In no case may the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this section with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B of the Social Security Act, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services (as defined in section 1876(e)(3) of the Social Security Act).

(3)(A) Subject to subparagraphs (B) and (C), each agreement to conduct a demonstration project under this section shall provide that if—

(i) the adjusted community rate, referred to in paragraph (2), for community nursing and ambulatory care covered under parts A and B of title XVIII of the Social Security Act (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

is less than

(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of the 12-month period (as determined on such basis as the Secretary determines appropriate) described in such subsection for members enrolled under this section with the organization,

the eligible organization shall provide to such members the additional benefits described in section 1876(g)(3) of the Social Security Act which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

(C) An organization conducting a demonstration project under this section may provide (with the approval of the Secretary) that a part of the value of such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5) of the Social Security Act.

(4) The provisions of paragraphs (3), (5), and (6) of section 1876(g) of the Social Security Act shall apply in the same manner to agreements under this section as they apply to risk-sharing contracts under section 1876 of such Act, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

(5) Section 1876(e)(4) of the Social Security Act shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876 of such Act.

(f) COMMENCEMENT AND DURATION OF PROJECTS.—Each demonstration project under this section shall begin not later than July 1, 1989, and shall be conducted for a period of three years.

(g) REPORT.—Not later than January 1, 1992, the Secretary shall submit to the Congress a report on the results of the demonstration projects conducted under this section.

SEC. 4086. WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE.

Section 9307(a) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "1988" and inserting in lieu thereof "1990".

SEC. 4087. TECHNICAL CORRECTION RELATING TO CERTIFICATION OF PODIATRIC TEACHING PROGRAMS.

Section 1861(b)(6) of the Social Security Act (42 U.S.C. 1395x(b)(6)) is amended by striking "Council on Podiatry Education of the American Podiatry Association" and inserting in lieu thereof "Council of Podiatric Medical Education of the American Podiatric Medical Association".

SEC. 4088. PROVISION OF OFFSITE COMPREHENSIVE OUTPATIENT REHABILITATION SERVICES.

Section 1861(cc)(1) of the Social Security Act (42 U.S.C. 1395x(cc)(1)) is amended by adding at the end thereof the following: "In the case of physical therapy, occupational therapy, and speech pathology services, there shall be no requirement that the item or service be furnished at any single fixed location if the item or service is furnished pursuant to such plan and payments are not otherwise made for the item or service under this title.".

SEC. 4089. MEDICARE HEARINGS AND APPEALS.

(a) MAINTAINING CURRENT SYSTEM FOR HEARINGS AND APPEALS.—Any hearing conducted under section 1869(b)(1) of the Social Security Act prior to the date on which the Secretary of Health and Human Services submits the report required under subsection (b)(1) shall be conducted by Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as are hearings conducted under section 205(b)(1) of such Act.

(b) STUDY AND REPORT ON USE OF TELEPHONE HEARINGS.—

(1) The Secretary of Health and Human Services, together with the Comptroller General of the United States, shall conduct a study on holding hearings under section 1869(b)(1) of the Social Security Act by telephone and shall report the results of the study not later than 6 months after the date of enactment of this Act.

(2) The study under paragraph (1) shall focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and shall examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources).

SEC. 4090. MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.

Prior to January 1, 1990, the Secretary of Health and Human Services shall not conduct any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act. The Secretary may contract for the design of, and site selection for, such demonstration projects.

SEC. 4091. PERMITTING DISABLED INDIVIDUALS TO RENEW ENTITLEMENT TO MEDICARE AFTER GAINFUL EMPLOYMENT WITHOUT A 2-YEAR WAITING PERIOD.

(a) IN GENERAL.—Section 226(f) of the Social Security Act (42 U.S.C. 426(f)) is amended by inserting before the period at the end the following: ", unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period".

(b) EFFECTIVE DATE.—

(1) The amendment made by subsection (a) shall apply to months beginning after the end of the 60-day period beginning on the date of enactment of this Act.

(2) The amendment made by subsection (a) shall not apply so as to include (for the purposes described in section 226(f) of the Social Security Act) monthly benefits paid for any month in a previous period (described in that section) that terminated before the end of the 60-day period described in paragraph (1).

SEC. 4092. HEALTH MAINTENANCE ORGANIZATION REFORMS.

(a) CIVIL MONEY PENALTIES AND INTERMEDIATE SANCTIONS AGAINST HMOs/CMPs.—Section 1876(i)(6) of the Social Security Act (42 U.S.C. 1395mm) is amended to read as follows:

"(6)(A) If the Secretary determines that an eligible organization with a contract under this section—

"(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

"(ii) imposes premiums on individuals enrolled under this section in excess of the premiums permitted;

"(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section;

"(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this section) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

"(v) misrepresents or falsifies information that is furnished—

"(I) to the Secretary under this section, or

"(II) to an individual or to any other entity under this section; or

"(vi) fails to comply with the requirements of subsection (g)(6)(A);

the Secretary may provide for any of the remedies described in subparagraph (B).

"(B) The remedies described in this subparagraph are—

"(i) civil money penalties of not more than $25,000 for each such failure under clause (i) of subparagraph (A) or, with respect to any other determination under such subparagraph, of not more than $10,000 for each such determination,

"(ii) suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

"(iii) suspension of payment to the organization under this section for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as they apply to a civil money penalty under that section.".

(b) TEMPORARY WAIVER FOR WATTS HEALTH FOUNDATION.—Section 9312(c)(3) of the Omnibus Budget Reconciliation Act of 1986 is amended by adding at the end thereof the following new subparagraph:

"(D) TREATMENT OF CERTAIN WAIVERS.—In the case of an eligible organization (or successor organization) that is described in clauses (i) and (ii) of subparagraph (C) and that received a grant or grants totaling at least $3,000,000 in fiscal year 1987 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act—

"(i) before January 1, 1990, section 1876(f) of the Social Security Act shall not apply to the organization;

"(ii) beginning on January 1, 1990, the Secretary of Health and Human Services shall waive the requirement of such section with respect to the organization if—

"(I) before such date, the organization has submitted to the Secretary a schedule for the organization to comply with the requirement of section 1876(f)(1) of such Act, and the Secretary has found such schedule to be reasonable and has approved such schedule; and

"(II) periodically after such date, the Secretary reviews the organization's compliance with such schedule and determines that the organization has complied, or made significant progress towards compliance, with such schedule; and

"(iii) after January 1, 1990, if the Secretary has approved a schedule under clause (ii)(I) and has determined, in a periodic review under clause (ii)(II), that the organization has not complied, or made significant progress towards compliance, with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.".

(c) EXTENSION OF WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall extend without interruption, through September 30, 1992, the approval of waivers granted under subsection (a) of section 2355 of the Deficit Reduction Act of 1984 for the demonstration project described in subsection (b) of that section, subject to the terms and conditions (other than duration of the project) established under that section (as amended by subsection (b)).

(2) EXTENSION OF RISK.—Section 2355(b)(5) of the Deficit Reduction Act of 1984 is amended by inserting "and in succeeding years" after "third year".

(3) INTERIM REPORT.—Section 2355(d)(2) of the Deficit Reduction Act of 1984 is amended by striking "final" and inserting "interim".

(4) FINAL REPORT.—The Secretary shall submit a final report to the Congress on the project referred to in paragraph (1) not later than March 31, 1993.

(d) PAYMENT METHODOLOGY REFORM DEMONSTRATIONS.—

(1) The Secretary of Health and Human Services (in this section referred to as the "Secretary") is specifically authorized to conduct demonstrations under this subsection for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act.

(2)(A) Demonstrations shall be conducted under this subsection in each of the following three areas:

(i) Computing adjustments to the average per capita cost under section 1876 of the Social Security Act on the basis of health status.

(ii) Contracting with employer-related groups to provide medicare coverage under which payment is based on the experience of the employer-related group, benefits are offered to employees in a managed care setting, and participation is voluntary.

(iii) Accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under section 1876 of the Social Security Act.

(3)(A) In carrying out demonstrations under clause (ii), the Secretary shall appoint (in consultation with the Congress) a panel of specialists to review the project and advise on both rate-setting and the adoption of appropriate measures to ensure high quality of care.

(B)(i) Each demonstration conducted under clause (iii) shall consider geographic bases which may provide more equitable and appropriate payment than is currently provided on a county-by-county basis.

(ii) Demonstrations under clause (iii) shall primarily serve geographic areas in which payment rates under section 1876 of the Social Security Act are below 80 percent of the median of the adjusted average per capita cost for all counties within metropolitan statistical areas (and may include eligible organizations under section 1876 of such Act located in urban areas that primarily serve populations from counties in which payment rates are below such percentage).

(iii) Five million dollars in each of fiscal years 1989 and 1990 is authorized for demonstrations under clause (iii).

(4) The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration project under paragraph (1) of this section as they apply to experiments under subsection (a)(1) of that section.

(e) HMO PAYMENTS FOR HOSPITAL SERVICES.—

(1) Section 1876(g)(4) of the Social Security Act (42 U.S.C. 1395mm(g)(4)) is repealed.

(2) Section 1866(a)(1) of such Act is amended by adding at the end thereof the following new subparagraph:

"(O) in the case of hospitals and skilled nursing facilities to accept as payment in full for inpatient hosptial and extended care services that are covered under this title and are furnished to any individual enrolled under section 1876 with an eligible organization that has as of October 1, 1987, exercized the option under 1876(g)(4) of the Social Security Act as in effect prior to the date of enactment at this section, the amounts (in the case of hospitals) or limits (in the case of skilled nursing facilities) that would be made as a payment in full under this title if the individuals were not so enrolled.".

(3) PROVISIONS OF DRG RATES.—The Secretary of Health and Human Services shall provide (in machine readable form) to eligible organizations described in paragraph (2) Medicare DRG Rates for payments required by the amendment made by sub-

section (b) and data on cost pass-through items for all inpatient services provided to medicare beneficiaries enrolled with eligible organizations under section 1876 of the Social Security Act.

(4) EFFECTIVE DATE.—The amendment made by paragraphs (1) and (2) shall apply to admissions on or after April 1, 1988, or earlier if the Secretary can provide the information required under paragraph (3) in machine readable form.

(f) DISCOUNT AND ADVANCE DETERMINATION OF PAYMENTS.—Section 1876(a)(1)(C) is amended by adding at the end the following: "In the case of a contract for a term of more than one year, the Secretary, at the request of the eligible organization, may determine the annual rates for each year of the contract in advance of entering into such contract, and may discount those annual rates as the Secretary determines appropriate in advance of entering into such a contract.".

(g) POST-CONTRACT PROTECTION FOR ENROLLEES WITH ELIGIBLE ORGANIZATIONS UNDER THE MEDICARE PROGRAM; PRIORITY UNDER THE BANKRUPTCY CODE.—

(1) Section 1876(b)(2) of such Act (42 U.S.C. 1395mm(b)(2)) is amended by adding at the end thereof the following new subparagraph:

"(F) The entity makes assurances (satisfactory to the Secretary) that in the event the entity ceases to provide items and services pursuant to a contract under this section, the entity will provide or arrange for supplemental coverage of benefits under this title, during any exclusion period related to a pre-existing condition, to all individuals enrolled with the entity who receive benefits under this title.".

(2)(A) Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end thereof the following new section:

"§ 1114. Special payment rule for health maintenance organizations.

"(a) Notwithstanding any other provision of this title, in the case of a debtor in possession that has made the assurances required under section 1876(b)(2)(F) of the Social Security Act, the debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, shall timely make payments for supplemental coverage of benefits under title XVIII of the Social Security Act (to the extent such payments are necessary to meet the requirement for which assurances are made under such section).

"(b) Any payment under subsection (a) required to be made before a plan confirmed under section 1129 of this title is effective has the status of an allowed administrative expense as provided in section 503 of this title.".

(B) Section 1129 of title 11, United States Code, is amended by adding at the end of subsection (a) thereof the following:

"(12) In the case of an entity that has made the assurances required under section 1876(b)(2)(F) of the Social Security Act, the plan provides for the continuation after its effective date of payment for supplemental coverage of benefits under title XVIII of the Social Security Act, at any time prior to confirmation of the plan, to the extent any such payment is necessary to meet the requirement for which assurances are made under such section.".

(C) The table of sections for subchapter I of chapter 11, title 11, United States Code, is amended by adding at the end thereof the following new item:

"1114. Special payment rule for health maintenance organizations.".

(D) The amendments made by this paragraph shall become effective on the date of enactment of this Act and shall be effective with respect to cases commenced under chapter 11 of title 11, United States Code, in which a plan for reorganization was not confirmed by the court as of the date of enactment of this Act.

(h) TASK FORCE ON MEDICARE CAPITATION.—

(1) There is hereby established a Task Force to be known as the Task Force on Medicare Capitation (in this subsection referred to as the "Task Force") to be composed of 15 members appointed in accordance with paragraph (2)(A).

(2)(A)(i) Members of the Task Force shall be appointed by the Prospective Payment Assessment Commission, in consultation with the Physician Payment Review Commission, after consultation with private and prepaid health plan organizations.

(ii) Of the 15 members composing the Task Force—

(I) five members shall be chosen from among representatives of private health plan and prepaid health plan organizations (which representatives may include physicians and other health professionals who serve Medicare beneficiaries),

(II) five members shall be chosen from among researchers in health care delivery and finance and individuals with an expertise in the financing and underwriting of prepaid health care, and

(III) five members shall be chosen from among Medicare beneficiaries and representatives of employers and labor.

(B) Members of the Task Force shall serve for the life of the Task Force. A vacancy on the Task Force shall be filled in the same manner in which the original appointment was made, shall be consistent with the requirements of subparagraph (A)(ii), and shall not affect the powers or duties of the Task Force.

(C) A majority of the members of the Task Force shall constitute a quorum for the transaction of business. Decisions of the Task Force shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(D) The first meeting of the Task Force shall be called by the Prospective Payment Assessment Commission and shall be held not later than January 1, 1988. At such meeting, the members of the Task Force shall select a chairman from among such members and shall meet thereafter at the call of the chairman or of a majority of the members (which in no event shall be less than once every three months).

(3)(A) Members of the Task Force shall serve without pay.

(B) Members of the Task Force shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

(4)(A) It shall be the duty of the Task Force—

(i) to review periodically the calculations and methodology employed by the Secretary in determining the capitation rate with respect to an organization with a risk-sharing contract with the Secretary of Health and Human Services under section 1876 of the Social Security Act,

(ii) to document and report on the discrepancies between the actual and projected United States per capita incurred cost used for purposes of determining such capitation rate (and, in particular, to identify such discrepancies with respect to calendar years 1985, 1986, and 1987), and

(iii) to assess alternative methodologies for determining such capitation rate.

(B) Not later than January 1 of 1989 and 1990, the Secretary shall submit interim reports to the Congress describing the activities of the Task Force during the preceding year and containing such assessment, analysis, evaluation, and recommendations (as described in subparagraph (C)(i)) as can reasonably be formulated at the time such reports are prepared and submitted.

(C)(i) Not later than January 1, 1989, the Task Force shall submit a report to the Congress that contains—

(I) an assessment of the extent to which the long-term cost of providing benefits under title XVIII of the Social Security Act would be reduced by providing such benefits through prepaid health plans;

(II) an analysis of the use, cost, and quality of benefits provided under prepaid plans as compared to fee-for-service systems;

(III) an evaluation of—

(aa) the use of various geographic areas in calculating the capitation rate applicable to an organization with a risk-sharing contract with the Secretary of Health and Human Services under section 1876 of the Social Security Act,

(bb) the use of fee-for-service reimbursement and utilization rates in calculating such rate, and

(cc) the effects on such rate of substantial market area penetration by capitated health plans; and

(III) recommendations for revising the method for calculating the capitation rate applicable to an organization with a risk-sharing contract with the Secretary of Health and Human Services under section 1876 of the Social Security Act that specifically address the need for—

(aa) adjusting the rate to account for the case mix (including such factors as age, disability, and functional status) of individuals entitled to benefits under title XVIII of the Social Security Act who are enrolled with the organization, geographic differences in the cost of furnishing services, and the effect of outlier cases, (bb) controlling and reimbursing for catastrophic illness by using alternative methodologies to calculate the rate,

(cc) developing methods for ensuring that individuals residing in rural or medically underserved areas have access to quality health care (as provided through such organizations), and

(dd) setting a more equitable rate with respect to contracting organizations that serve rural or medically underserved areas (or any geographic area in which the medical practice is more conservative).

(ii)(I) The report submitted to the Congress under clause (i) shall be prepared in consultation with the Health Care Financing Administration and shall be based, in part, upon the findings of various research projects that are conducted by the Task Force or by such Administration.

(II) Prior to submitting the report to the Congress under clause (i), the Task Force shall make the report available to representatives of private and prepaid health plan organizations and shall provide to such representatives an opportunity for commenting upon the report. The comments of such representatives shall accompany the report when submitted to the Congress.

(5)(A)(i) Subject to clause (ii), the Task Force may award grants or contracts to individuals or entities to conduct research that the Task Force determines would be of assistance in the performance of any of the duties of the Task Force (as described in paragraph (4)).

(ii) No contract or grant may be awarded under clause (i) unless the Task Force demonstrates to the satisfaction of the Prospective Payment Assessment Commission and the Physician Payment Review Commission that information otherwise available to the Task Force is inadequate to allow the Task Force to perform such duties.

(B)(i) The Task Force may appoint and fix the pay of such staff personnel as it deems desirable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates (which personnel shall be allowed travel expenses, including a per diem in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code).

(ii) The Task Force may use on a reimbursable basis, with the prior consent of the commission concerned, the services of the personnel of the Prospective Payment Assessment Commission and the Physician Payment Review Commission.

(C) The Task Force may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States Government.

(D) The Task Force may accept, use, and dispose of donations of money and property and may accept such volunteer services of individuals as it deems appropriate.

(E) The Task Force may procure supplies, services, and property, and make contracts.

(F) For purposes of carrying out its duties under paragraph (4), the Task Force may adopt such rules for its organization and procedures as it deems appropriate, including procedures that allow any interested party the opportunity to submit information to the Task Force.

(6)(A) The Task Force shall terminate on January 2, 1991.

(B) Any funds held by the Task Force on the date of termination of the Task Force shall be deposited in the general fund of the Treasury of the United States and credited as miscellaneous receipts. Any property (other than funds) held by the Task Force on such date shall be disposed of as excess or surplus property.

(7) There are authorized to be appropriated for each of the fiscal years 1988 through 1991 such sums as may be necessary to carry out the provisions of this subsection.

(i) DISABLED INDIVIDUAL CLASSIFICATION.—Section 1876(a)(1)(B) of such Act (42 U.S.C. 1395mm(a)(1)(B)) is amended—

(1) by inserting "(i)" after "(B)"; and

(2) by adding at the end thereof the following new clause:

"(ii) The Secretary shall establish a class of members based on age and disability status that includes individuals who attain the age of 65 during calendar year 1988, 1989, 1990, or 1991, are entitled to benefits under this title, and (prior to attaining such age) received disability insurance benefits under section 223.".

(j) TWO-YEAR EXTENSION ON PERIOD FOR BENEFIT STABILIZATION.—

(1) Section 1876(g)(5) of such Act (42 U.S.C. 1395mm(g)(5)), as added by the amendment made by section 2350(a)(2) of the Deficit Reduction Act of 1984, is amended by striking "four" and inserting in lieu thereof "six".

(2) The amendment made by paragraph (1) shall be effective as if included in the enactment of the amendment made by section 2350(a)(2) of the Deficit Reduction Act of 1984.

(k) TREATMENT OF MICHIGAN BLUE CARE HMO NETWORK UNDER 50 PERCENT RULE.—Blue Care, Inc., a nonprofit corporation which is indirectly owned and operated by Blue Cross and Blue Shield of Michigan, Inc. and which enrolls individuals for the purpose of providing them with health care services through assignment to health maintenance organizations which are indirectly or wholly owned and operated by Blue Cross and Blue Shield of Michigan, Inc., is deemed to meet the requirement of section 1876(f)(1) of the Social Security Act (relating to limitation on enrollment of medicare and medicaid beneficiaries with an eligible organization) if—

(1) such requirement would be met if applied to all individuals enrolled with (or otherwise assigned to) each of such health maintenance organizations, and

(2) not more than 20 percent of the number of individuals who are members of (or otherwise assigned to) each such orga-

nization consists of individuals who are entitled to benefits under title XVIII of the Social Security Act.

(l) ASSIGNMENT OF MEMBERS FOR HIP HEALTH MAINTENANCE ORGANIZATION.—

(1) Section 1876(f) of such Act (42 U.S.C. 1395mm(f)) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3)(A) An eligible organization described in subparagraph (B) may elect, for purposes of determining the compliance of a subdivision, subsidiary, or affiliate described in subparagraph (B)(iii) with the requirement of paragraph (1) for the period before October 1, 1992, to have members of the subdivision, subsidiary, or affiliate considered to be members of the parent organization.

"(B) An eligible organization described in this subparagraph is an eligible organization which—

"(i) is described in section 1903(m)(2)(B)(iii);

"(ii) has members who have a collectively bargained contractual right to obtain health benefits from the organization;

"(iii) elects to provide benefits under a risk-sharing contract to individuals residing in a service area through a subdivision, subsidiary, or affiliate which itself is an eligible organization serving the area and which is wholly-owned or wholly-contracted by the parent eligible organization; and

"(iv) has assumed any risk of insolvency and quality assurance with respect to individuals receiving benefits through such a subdivision, subsidiary, or affiliate.".

(2) The amendments made by paragraph (1) shall become effective on the date of enactment of this Act.

SEC. 1093. RECOVERY OF PAYMENTS FOR CERTAIN PACEMAKER DEVICES.

Section 1862(h) of the Social Security Act (42 U.S.C. 1395y(h)) is amended—

(1) in paragraph (1)(B), by striking "law," and inserting in lieu thereof "law (and any amount paid to a provider under any such warranty),";

(2) in paragraph (1)(D), by striking "(3)," and inserting in lieu thereof "(3), in determining the amount subject to repayment under paragraph (2)(C),";

(3) in paragraph (2)—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and

(C) by adding at the end thereof the following new subparagraph:

"(C) to make repayment to the Secretary of amounts paid under this title to the provider with respect to any cardiac pacemaker device or lead which has been replaced by the manufacturer, or for which the manufacturer has made payment to the provider, under an express or implied warranty."; and

(4) in paragraph (4)(B)—

(A) by striking "or has" and inserting in lieu thereof ", has", and

(B) by striking "(2)(B)," and inserting in lieu thereof "(2)(B), or has failed to make repayment to the Secretary as required under paragraph (2)(C),".

(2) The amendments made by paragraph (1) shall become effective on January 1, 1988.

Subpart II—Medicaid Provisions

SEC. 1101. HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY.

(a) WAIVER FORMULA.—

(1) Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended—

(A) by transferring subsection (d) to the end of such section and redesignating it as subsection (h), and

(B) by inserting after subsection (c) the following new subsection:

"(d)(1) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this title shall include as 'medical assistance' under such plan payment for part or all of the cost of home or community-based services (other than room and board) which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that but for the provision of such services the individuals would be likely to require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan.

"(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

"(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

"(B) with respect to individuals 65 years of age or older who—

"(i) are entitled to medical assistance for skilled nursing or intermediate care facility services under the State plan,

"(ii) may require such services, and

"(iii) may be eligible for such home or community-based services under such waiver,

the State will provide for an evaluation of the need for such skilled nursing facility or intermediate care facility services;

"(C) such individuals who are determined to be likely to require the level of care provided in a skilled nursing facility or intermediate care facility are informed of the feasible alternatives to the provision of skilled nursing facility or intermediate care facility services, which such individuals may choose if available under the waiver; and

Each State with a waiver under this subsection shall provide to the Secretary annually, consistent with a reasonable data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

"(3) A waiver granted under this subsection may include a waiver of the requirements of section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community). Subject to a termination by the State (with notice to the Secretary) at any time, a waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under the waiver, that the maximum amount of the individual's income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a waiver under subsection (c).

"(4) A waiver under this subsection may, consistent with paragraph (2)—

"(A) limit the individuals provided benefits under such waiver to individuals with respect to whom the State has determined that there is a reasonable expectation that the amount of medical assistance provided with respect to the individual under such waiver will not exceed the amount of such medical assistance provided for such individual if the waiver did not apply, and

"(B) provide medical assistance to individuals for case management services, homemaker/home health aide services and personal care services, adult day health services, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

"(5)(A) In the case of a State having a waiver approved under this subsection, notwithstanding any other provision of section 1903 to the contrary, the total amount expended by the State for medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community-based services under the State plan for individuals 65 years of age or older during a waiver year under this subsection may not exceed the projected amount determined under subparagraph (B).

"(B) For purposes of subparagraph (A), the projected amount under this subparagraph is the sum of the following:

"(i) The aggregate amount of the State's medical assistance under this title for skilled nursing facility services and intermediate care facility services furnished to individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent or the sum of—

"(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the base year and the waiver year involved, plus

"(II) the percentage increase between the base year and the waiver year involved in the number of residents in the State who have attained the age of 65, plus

"(III) 2 percent for each year beginning after the base year and ending before the waiver year.

"(ii) The aggregate amount of the State's medical assistance under this title for home and community-based services for individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent or the sum of—

"(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the base year and the waiver year involved, plus

"(II) the percentage increase between the base year and the waiver year involved in the number of residents in the State who have attained the age of 65, plus

"(III) 2 percent for each year beginning after the base year and ending before the waiver year.

In the case of a State that does not report actual final expenditures under this title to the Secretary on the basis of the age categories described in this subparagraph for a year ending before the date of the enactment of this subsection, such State (in order to be granted a waiver under this subsection for any waiver year with respect to which this subparagraph applies) must report such expenditures on such basis with respect to each fiscal year beginning on or after October 1, 1988.

"(C) In this paragraph:

"(i) The term 'home and community-based services' includes services described in sections 1905(a)(7) and 1905(a)(8), services described in paragraph (4)(B), personal care services, and services furnished pursuant to a waiver under subsection (c).

"(ii)(I) Subject to subclause (II), the term 'base year' means the most recent year (ending before the date of the enactment of this subsection) for which actual final expenditures under this title have been reported to, and accepted by, the Secretary.

"(II) For purposes of subparagraph (C), in the case of a State that does not report expenditures on the basis of the age categories described in such subparagraph for a year ending before the date of the enactment of this subsection, the term 'base year' means fiscal year 1989.

"(iii) The term 'intermediate care facility services' does not include services in an institution for mental diseases.

"(6)(A) A determination by the Secretary to deny a request for a waiver (or extension of waiver) under this subsection shall be subject to review to the extent provided under section 1116(b).

"(B) Notwithstanding any other provision of this Act, if the Secretary denies a request of the State for an extension of a waiver under this subsection, any waiver under this subsection in effect on the date such request is made shall remain in effect for a period of not less than 90 days after the date on which the Secretary denies such request (or, if the State seeks review of such determination in accordance with subparagraph (A), the date on which a final determination is made with respect to such review).".

(2)(A) Section 1902(a)(10)(A)(ii)(VI) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)(VI)) is amended by striking "section 1915(c)" each place it appears and inserting "subsection (c) or (d) of section 1915".

(B) Section 1915(h) of such Act, as redesignated by subsection (a), is amended by striking "(c)" and inserting in lieu thereof "(c) or (d)".

(3) In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act, which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through July 1, 1988.

(b) TECHNICAL AMENDMENT RELATING TO WAIVERS FOR HOME AND COMMUNITY-BASED SERVICES.—Section 1915(c)(3) of such Act (42 U.S.C. 1396n(c)(3)) is amended by striking "and section 1902(a)(10)(B) (relating to comparability)" and inserting in lieu thereof ", section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to single standard for income and resource eligibility)".

(c) INCREASE IN NUMBER OF INDIVIDUALS WHO MAY BE SERVED UNDER MODEL HOME AND COMMUNITY-BASED SERVICE WAIVERS.—Section 1915(c) of such Act (42 U.S.C. 1396n(c)) is amended by adding at the end thereof the following: "No waiver under this subsection shall limit by an amount less than 200 the number of individuals in the State who may receive home and community-based services under such waiver.".

(d) TECHNICAL AMENDMENT RELATING TO EFFECTIVE DATE FOR PROVISION OF HABILITATION SERVICES.—Section 9502(j)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by inserting before the end period "without regard to the date on which the individual with respect to whom services are provided was discharged from a skilled nursing facility or intermediate care facility".

(e) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 1988.

(2)(A) The amendment made by subsection (b) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(B) The amendment made by subsection (c) shall become effective on the date of enactment of this Act.

(C) The amendment made by subsection (d) shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4102. TREATMENT OF GARDEN STATE HEALTH PLAN.

(a) IN GENERAL.—Section 1903(m) of the Social Security Act (42 U.S.C. 1396(m)) is amended—

(1) by adding at the end the following new paragraph:

"(6)(A) For purposes of this subsection and section 1902(e)(2)(A), in the case of the State of New Jersey, the term 'contract' shall be deemed to include an undertaking by the State agency, in the State plan under this title, to operate a program meeting all requirements of this subsection.

"(B) The undertaking described in subparagraph (A) must provide—

"(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which entity may be a subdivision of the State agency administering the State plan under this title;

"(ii) for separate accounting for the funds used to operate such program;

"(iii) for setting the capitation rates and any other payment rates for services provided in accordance with this subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this title for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population; and

"(iv) that the State agency will contract, for purposes of meeting the requirement under section 1902(a)(30)(C), with an organization or entity that under section 1154 reviews services provided by an eligible organization pursuant to a contract under section 1876 for the purpose of determining whether the quality of services meets professionally recognized standards of health care.

"(C) The undertaking described in subparagraph (A) shall be subject to approval (and annual re-approval) by the Secretary in the same manner as a contract under this subsection.

"(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1915(b)."; and

(2) in paragraph (2)(F), by striking out all that precedes "a State plan may restrict" and inserting in lieu thereof the following:

"(F) In the case of—

(i) a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) which meets the requirement of subparagraph (A)(ii), or

"(ii) a program pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis are individuals who (I) are not insured for benefits under part B of title XVIII or eligible for benefits under this title, and (II) (in the case of such individuals whose prepayments are made in whole or in part by any government entity) had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any governmental entity,".

(b) Conforming Amendment.—Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by striking out "section 1903(m)(2)(G)" and inserting in lieu thereof "paragraph (2)(G) or (6) of section 1903(m)".

SEC. 4103. MEDICAID MATCHING RATE FOR QUALITY REVIEW OF HMO SERVICES.

(a) In General.—Section 1903(a)(3)(C) of the Social Security Act (42 U.S.C. 1396b(a)(3)(C)) is amended by inserting "or by a private accreditation body in accordance with section 1902(a)(30)(C)" before the semicolon.

(b) Effective Date.—The amendment made by subsection (a) shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after the date of enactment of this Act.

SEC. 4104. PHYSICIANS' SERVICES FURNISHED BY DENTISTS.

(a) Clarifying Coverage.—Section 1905(a)(5) of the Social Security Act (42 U.S.C. 1396d(a)(5)) is amended by inserting "(A)" after "(5)" and by inserting before the semicolon at the end the following: ", and (B) medical and surgical services furnished by a dentist (described in section 1861(r)(2)) to the extent such services may be performed under State law either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in subparagraph (A) if furnished by a physician (as defined in section 1861(r)(1))".

(b) Effective Date.—

(1) The amendment made by subsection (a) applies (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

SEC. 4105. NEW YORK STATE PILOT PROGRAM FOR PRENATAL, MATERNITY, AND NEWBORN CARE.

(a) In General.—Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this section referred to as the "Secretary"), the State of New York (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing its Prenatal/Maternity/Newborn Care Pilot Program (in this section referred to as the "Program") as an alternative to existing Federal programs.

(b) Nature of Project.—Under the demonstration project conducted under this section—

(1) any individual who receives benefits under the Program shall not receive any of such benefits under the plan of the State under title XIX of the Social Security Act; and

(2) the Secretary shall make payments to the State with respect to individuals receiving benefits under the Program in the same amounts as would be payable for such benefits under title XIX of the Social Security Act if such individuals were receiving such benefits under such title (as determined by the Secretary).

(c) WAIVERS.—The Secretary may (with respect to the demonstration project under this section) waive compliance with any requirements contained in title XIX of the Social Security Act which (if applied) would prevent the State from carrying out the project, effectively achieving its purpose, or receiving payments in accordance with subsection (b)(2).

(d) REQUIRED ASSURANCES.—As a condition of approval of the demonstration project under this section, the State shall provide assurances satisfactory to the Secretary that the State will continue to make benefits available under title XIX of the Social Security Act to all pregnant women entitled to receive benefits under such title to the extent such benefits are not provided under the Program.

(e) DURATION OF PROJECT.—The demonstration project under this section shall be conducted for a period not to exceed three years.

SEC. 4106. MEDICAID WAIVER FOR HOSPICE CARE FOR AIDS PATIENTS.

Section 1905(o)(1) of the Social Security Act (42 U.S.C. 1396d(o)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking "The" and inserting in lieu thereof "Subject to subparagraph (B), the"; and

(3) by adding at the end thereof the following new subparagraph:

"(B)(i) For purposes of this title only, with respect to the definition of hospice program under section 1861(dd)(2), the Secretary may allow an agency or organization to make the assurance under subparagraph (A)(iii) of such section without taking into account any individual who is afflicted with acquired immunodeficiency syndrome.

"(ii) The Secretary shall establish appropriate procedures for making the allowance under clause (i).".

SEC. 4107. DELAY QUALITY CONTROL SANCTIONS FOR MEDICAID.

The Secretary of Health and Human Services shall not impose any reductions in payments to States pursuant to section 1903(u) of the Social Security Act for any calendar quarter beginning before July 1, 1988.

SEC. 4108. TECHNICAL AMENDMENTS RELATING TO NEW JERSEY RESPITE CARE PILOT PROJECT.

(a) CONDITIONS OF AGREEMENT.—Section 9414(b) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) by redesignating paragraphs (2), (3), and (4), as paragraphs (3), (4), and (5), respectively,

(2) by inserting after paragraph (1) the following new paragraph:

"(2) provide that the State may submit a detailed proposal describing the project (in lieu of a formal request for the waiver of applicable provisions of title XIX of the Social Security Act) and that submission of such a description by the State will be treated as such a request for purposes of subsection (g),", and

(3) in paragraph (3), as redesignated by paragraph (1) of this subsection, by striking "if the project" and all that follows through "Act" the second place it appears and inserting in lieu thereof "the State shall utilize a post-eligibility cost-sharing formula based on the available income of participants with income in excess of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981)".

(b) DEFINITIONS.—

(1) Section 9414(a) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "elderly and disabled individuals" and inserting in lieu thereof "eligible individuals".

(2) Section 9414(c) of the Omnibus Budget Reconciliation Act of 1986 is amended to read as follows:

"(c) Definitions.—For purposes of this section—

"(1) the term 'eligible individual' means an individual—

"(A) who is elderly or disabled,

"(B)(i) whose income (not including the income of the spouse or family of the individual) does not exceed 300 percent of the amount in effect under section 1611(a)(1)(A) of the Social Security Act (as increased pursuant to section 1617 of such Act), or

"(ii) in the case of an individual and spouse who are both dependent on a caregiver, whose combined incomes do not exceed such amount,

"(C) at the option of the State, who meets a resource standard established by the State,

"(D) who is at risk of institutionalization unless the individual's caregiver is provided with respite care, and

"(E) who has been determined to meet the requirements of subparagraphs (A) through (D) in accordance with an application process designed by the State; and

"(2) the term 'respite care services' shall include—

"(A) short-term and intermittent—

"(i) companion or sitter services (paid as well as volunteer),

"(ii) homemaker and personal care-services,

"(iii) adult day care, and

"(iv) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual), and

"(B) peer support and training for family caregivers (using informal support groups and organized counseling).".

(c) PROVISIONS SUBJECT TO WAIVER.—Section 9414(g) of the Omnibus Budget Reconciliation Act of 1986 is amended by inserting "section 1902(a)(10)(C)(i)(III)," after "section 1902(a)(10)(B),".

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4109. CONTINUED ELIGIBILITY AND RESTRICTION ON DISENROLLMENT WITHOUT CAUSE FOR METROPOLITAN HEALTH PLAN HMO.

For purposes of sections 1902(e)(2)(A) and 1903(m)(2)(F) of the Social Security Act, the Metropolitan Health Plan HMO operated by the New York City public hospitals shall be treated in the same manner as a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act).

Subpart III—Social Services and Income Security

SEC. 4111. NATIONAL COMMISSION ON CHILDREN.

(a) Part A of title XI of the Social Security Act is amended by adding at the end thereof the following:

"NATIONAL COMMISSION ON CHILDREN

"SEC. 1139. (a)(1) There is hereby established a commission to be known as the National Commission on Children (in this section referred to as the 'Commission').

"(b)(1) The Commission shall consist of—

"(A) twelve members to be appointed by the President,

"(B) twelve members to be appointed by the Speaker of the House of Representatives (in this section referred to as the 'Speaker'), and

"(C) twelve members to be appointed by the President pro tempore of the Senate (in this section referred to as the President pro tempore).

"(2) The President, the Speaker, and the President pro tempore shall each appoint as members of the Commission—

"(A) four individuals who—

"(i) are representatives of organizations providing services to children,

"(ii) are involved in activities on behalf of children, or

"(iii) have engaged in academic research with respect to the problems and needs of children,

"(B) four individuals who are elected or appointed public officials (at the Federal, State, or local level) involved in issues and programs relating to children, and

"(C) four individuals who are parents or representatives of parents or parents' organizations.

"(3) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal programs.

"(c)(1) It shall be the duty and function of the Commission to serve as a forum on behalf of the children of the Nation and to conduct the studies and issue the report required by subsection (d).

"(2) The Commission (and any committees that it may form) shall conduct public hearings in different geographic areas of the country, both urban and rural, in order to receive the views of a broad spectrum of the public on the status of the Nation's children and on ways to safeguard and enhance the physical, mental, and emotional well-being of all of the children of the Nation, including those with physical or mental disabilities, and others whose circumstances deny them a full share of the opportunities that parents of the Nation may rightfully expect for their children.

"(3) The Commission shall receive testimony from individuals, and from representatives of public and private organizations and institutions with an interest in the welfare of children, including educators, health care professionals, religious leaders, providers of social services, representatives of organizations with children as members, elected and appointed public officials, and from parents and children speaking in their own behalf.

"(d) Not later than September 30, 1988, the Commission shall submit a report to the President and the Congress that sets forth recommendations with respect to the following subjects:

"(1) Questions relating to the health of children that the Commission shall address include—

"(A) how to reduce infant mortality,

"(B) how to reduce the number of low birth-weight babies,

"(C) how to reduce the number of children with chronic illnesses and disabilities,

"(D) how to improve the nutrition of children,

"(E) how to promote the physical fitness of children,

"(F) how to ensure that pregnant women receive adequate prenatal care,

"(G) how to ensure that all children have access to both preventive and acute care health services, and

"(H) how to improve the quality and availability of health care for children;

in the context of the purposes of titles V and XIX of this Act and (as appropriate) other provisions of Federal law.

"(2) Questions relating to social and support services for children and their parents that the Commission shall address include—

"(A) how to prevent and treat child neglect and abuse,

"(B) how to provide help to parents who seek assistance in meeting the problems of their children,

"(C) how to provide counseling services for children,

"(D) how to strengthen the family unit,

"(E) how children can be assured of adequate care while their parents are working or participating in education or training programs,

"(F) how to improve foster care and adoption services,

"(G) how to reduce drug and alcohol abuse by children and youths, and

"(H) how to reduce the incidence of teenage pregnancy;

in the context of the purposes of title XX and parts B and E of title IV of this Act and (as appropriate) other provisions of Federal law.

"(3) Questions relating to education that the Commission shall address include—

"(A) how to encourage academic excellence for all children at all levels of education,

"(B) how to use preschool experiences to enhance educational achievement,

"(C) how to improve the qualifications of teachers,

"(D) how schools can better prepare the Nation's youth to compete in the labor market,

"(E) how parents and schools can work together to help children achieve success at each step of the academic ladder,

"(F) how to encourage teenagers to complete high school and remain in school to fulfill their academic potential,

"(G) how to address the problems of drug and alcohol abuse by young people,

"(H) how schools might lend support to efforts aimed at reducing the incidence of teenage pregnancy, and

"(I) how schools might better meet the special needs of children who have physical or mental handicaps;

in the context of the purposes of title XX and part B of title IV of this Act and (as appropriate) other provisions of Federal law.

"(4) Questions relating to income security that the Commission shall address include—

"(A) how to reduce poverty among children, and

"(B) how to ensure that parents support their children to the fullest extent possible through improved child support collection services, including services on behalf of children whose parents are unmarried;

in the context of the purposes of parts A, C, and D of title IV of this Act and (as appropriate) other provisions of Federal law.

"(5) In addition to addressing the questions specified in paragraphs (1) through (4), the Commission shall—

"(A) seek to identify ways in which public and private organizations and institutions can work together at the community level to identify deficiencies in existing services for families and children and to develop recommendations to ensure that the needs of families and children are met, using all available resources, in a coordinated and comprehensive manner,

"(B) assess the existing capacities of agencies to collect and analyze data on the status of children and on relevant programs, identify gaps in the data collection system, and recommend ways to improve the collection of data and the coordination among agencies in the collection and utilization of data, and

"(C) examine the extent to which programs under this Act can be used to meet the needs of families and children and recommend any changes in such programs to make them more effective in meeting such needs.

The report required by this subsection shall be based upon the testimony received in the hearings conducted pursuant to subsection (c), and upon other data and findings developed by the Commission.

"(e)(1)(A) Members of the Commission shall be appointed not later than sixty days after the date of the enactment of this section, for terms ending on September 30, 1988.

"(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

"(2) The Commission shall elect one of its members to serve as Chairman of the Commission. The Chairman shall be a nonvoting member of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

"(4)(A) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission.

"(B) The Commission shall meet not less than four times during the period beginning with the date of the enactment of this section and ending with September 30, 1988.

"(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

"(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

"(f)(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5, United States Code.

"(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

"(g) In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

"(h)(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

"(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

"(i) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

"(j) There are authorized to be appropriated such sums as may be necessary to carry out this section.".

SEC. 4112. BOARDER BABIES DEMONSTRATION PROJECT.

Section 426 of the Social Security Act (42 U.S.C. 626) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting immediately after subsection (a) the following new subsection:

"(b)(1) There are authorized to be appropriated $4,000,000 for each of the fiscal years 1988, 1989, and 1990 for grants by the Secretary to public or private entities submitting applications under this subsection for the purpose of conducting demonstration projects under this subsection to develop alternative care arrangements for infants who do not have health conditions that require hospitalization and who would otherwise remain in inappropriate hospital settings.

"(2) The demonstration projects conducted under this section may include—

"(A) projects designed to allow infants described in paragraph (1) to remain with a parent in a residential setting, where appropriate care for the infant and suitable treatment for the parent (including treatment for drug or alcohol addiction) may be assured, with the goal of rehabilitating the parent and eliminating the need for such care for the infant;

"(B) projects that assure appropriate, individualized care for such infants in a foster home or other non-medical residential setting in cases where such infant has been abandoned by his or her parents; and

"(C) such other projects as the Secretary determines will best serve the interests of such infants and will serve as models for projects that agencies or organizations in other communities may wish to develop.

"(3) In evaluating applications from entities proposing to conduct a demonstration project under this subsection, the Secretary shall give priority to those projects that—

"(A) serve areas most in need of alternative care arrangements for infants described in paragraph (1);

"(B) provide for adequate evaluation; and

"(C) meet such other criteria as the Secretary may prescribe.

"(4) Grants may be used to pay the costs of maintenance and of necessary medical and social services (to the extent that these costs are not otherwise paid for under other titles of this Act), and for such other purposes as the Secretary may allow.".

SEC. 4113. STUDY OF INFANTS AND CHILDREN WITH AIDS IN FOSTER CARE.

(a) In General.—The Secretary of Health and Human Services (in this section referred to as the "Secretary"), together with the Comptroller General of the United States, shall conduct (or arrange for) a survey to determine—

(1) the total number of infants and children in the United States with acquired immune deficiency syndrome who have been placed in foster care;

(2) the problems encountered by social service agencies in placing infants and children with such syndrome in foster care; and

(3) the potential increase (over the five-year period beginning on the date of enactment of this Act) in the number of infants and children with such syndrome who will require foster care.

For purposes of this section, an infant or child with acquired immune deficiency syndrome includes an infant or child who is infected with the virus associated with such syndrome.

(b) RESTRICTION ON SCOPE OF SURVEY.—In conducting (or arranging for) the survey under subsection (a), the Secretary shall assure that survey activities do not duplicate research activities conducted by the Centers for Disease Control.

(c) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall report to the Congress on the results of the survey conducted under subsection (a) and shall make recommendations to the Congress with respect to improving the care of infants and children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

SEC. 4114. CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE.

(a) IN GENERAL.—Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this section referred to as the "Secretary"), the State of New York (in this section referred to as the "State") may conduct a demonstration program in accordance with this section for the purpose of testing a State program as an alternative to the program of Aid to Families with Dependent Children under title IV of the Social Security Act.

(b) NATURE OF PROGRAM.—Under the demonstration program conducted under this section—

(1) all custodial parents of dependent children who are eligible for supplements under the State plan approved under section 402(a) of the Social Security Act (and such other types or classes of such parents as the State may specify) may elect to receive benefits under the State's Child Support Supplement Program in lieu of supplements under such plan; and

(2) the Federal government will pay to the State with respect to families receiving benefits under the State's Child Support Supplement Program the same amounts as would have been payable with respect to such families under sections 403 and 1903 of the Social Security Act as if the families were receiving aid and medical assistance under the State plans in effect with respect to such sections.

(c) WAIVERS.—The Secretary shall (with respect to the program under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the program or effectively achieving its purpose.

(d) CONDITIONS OF APPROVAL.—As a condition of approval of the program under this section, the State shall—

(1) provide assurances satisfactory to the Secretary that the State—

(A) will continue to make assistance available to all eligible children in the State who are in need of financial support, and

(B) will continue to operate an effective child support enforcement program;

(2) agree—

(A) to have the program evaluated, and

(B) to report interim findings to the Secretary at such times as the Secretary shall provide; and

(3) satisfy the Secretary that the program will be evaluated using a reasonable methodology that can determine whether changes in work behavior and changes in earnings are attributable to participation in the program.

(e) APPLICATION PROCESS.—In order to participate in the program under this section, the State must submit an application under this section not later than two years after the date of enactment of this Act. The Secretary shall approve or disapprove the application of the State not later than 90 days after the date of its submission. If the application is disapproved, the Secretary shall provide to the State a statement of the reasons for such disapproval, of the changes needed to obtain approval, and of the date by which the State may resubmit the application.

(f) EFFECTIVE DATE.—The program under this section shall commence not later than the first day of the third calendar quarter beginning on or after the date on which the application of the State is approved in accordance with subsection (e).

(g) DURATION OF PROGRAM.—

(1) Except as provided in paragraph (2), if the Secretary approves the application of the State, the demonstration program under this section shall be conducted for a period not to exceed five years.

(2)(A) The Governor of the State may before the end of the period described in paragraph (1) terminate the demonstration program under this section if the Governor finds that the program is not successful in testing the State's Child Support Supplement Program as an alternative to the program under title IV of the Social Security Act. The Governor shall notify the Secretary of the decision to terminate the program not less than three months prior to the date of such termination.

(B) The Secretary may terminate the program before the end of such period if the Secretary finds that the program is not in compliance with the terms of the application. The Secretary shall notify the Governor of the decision to terminate the program not less than three months prior to the date of such termination.

SEC. 4115. DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

(a) IN GENERAL.—Upon application of the State of Washington and approval by the Secretary of Health and Human Services, the State of Washington (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing whether the operation of its Family Independence Program enacted in May 1987 (in this section referred to as the "Program"), as an alternative to the AFDC program under title IV of the Social Security Act, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning.

(b) NATURE OF PROJECT.—Under the demonstration project conducted under this section—

(1) every individual eligible for aid under the State plan approved under section 402(a) of the Social Security Act shall be eligible to enroll in the Program, which shall operate simultaneously with the AFDC program so long as there are individuals who qualify for the latter;

(2) cash assistance shall be furnished in a timely manner to all eligible individuals under the Program (and the State may not make expenditures for services under the Program until it has paid all necessary cash assistance), with no family receiving less in cash benefits than it would have received under the AFDC program;

(3) individuals may be required to register, undergo assessment, and participate in work, education, or training under the Program, except that—

(A) work or training may not be required in the case of—

(i) a single parent of a child under six months of age, or more than one parent of such a child in a two-parent family,

(ii) a single parent with a child of any age who has received assistance for less than six months,

(iii) a single parent with a child under three years of age who has received assistance for less than three years,

(iv) an individual under 16 years of age or over 64 years of age,

(v) an individual who is incapacitated, temporarily ill, or needed at home to care for an impaired person, or

(vi) an individual who has not yet been individually notified in writing of such requirement or of the expiration of his or her exempt status under this subparagraph;

(B) participation in work or training shall in any case be voluntary during the first two years of the Program, and may thereafter be made mandatory only in counties where more than 50 percent of the enrollees can be placed in employment within three months after they are job ready;

(C) in no case shall the work and training aspect of the Program be mandated in any county where the unemployment level is at least twice the State average; and

(D) mandated work shall not include work in any position created by a reduction in the work force, a bona fide labor dispute, the decertification of a bargaining unit, or a new job classification which subverts the intention of the Program;

(4) there shall be no change in existing State law which would eliminate guaranteed benefits or reduce the rights of applicants or enrollees; and

(5) the Program shall include due process guarantees and procedures no less than those which are available to participants in the AFDC program under Federal law and regulation and under State law.

(c) WAIVERS.—The Secretary shall (with respect to the project under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the project or effectively achieving its purpose, or with the requirements of sections 1902(a)(1), 1902(e)(1), and 1916 of that Act (but only to the extent necessary to enable the State to carry out the program as enacted by the State in April 1987).

(d) FUNDING.—

(1) The Secretary shall under section 403(b) or 1903(d) of the Social Security Act (as may be appropriate) reimburse the State for its expenditures under the Program—

(A) at a rate equal to the Federal matching rate applicable to the State under section 403(a)(1) (or 1118) of the Social Security Act, for cash assistance, medical assistance, and child care provided to enrollees;

(B) at a rate equal to the applicable Federal matching rate under section 403(a)(3) of such Act, for administrative expenses; and

(C) at the rate of 75 percent for an evaluation plan approved by the Secretary.

(2) As a condition of approval of the project under this section, the State must provide assurances satisfactory to the Secretary that the total amount of Federal reimbursement over the period of the project will not exceed the anticipated Federal reimbursements (over that period) under the AFDC and Medicaid programs; but this paragraph shall not prevent the State from claiming reimbursement for additional persons who would qualify for assistance under the AFDC program, for costs attributable to increases in the State's payment standard, or for any other federally-matched benefits or services.

(e) EVALUATION.—The State must satisfy the Secretary that the program will be evaluated using a reasonable methodology.

(f) DURATION OF PROJECT.—

(1) The project under this section shall begin on the date on which the first individual is enrolled in the Program and (subject to paragraph (2)) shall end five years after that date.

(2) The project may be terminated at any time, on six months written notice, by the State or (upon a finding that the State has materially failed to comply with this section) by the Secretary.

SEC. 4116. REPEAL OF UNNECESSARY CHILD SUPPORT REVOLVING FUND.

(a) IN GENERAL.—Section 452(c) of the Social Security Act (42 U.S.C. 652(c)) is amended to read as follows:

"(c) The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 457 the amount of each collection made on behalf of such State pursuant to subsection (b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to amounts collected after the date of enactment of this Act.

SEC. 4117. DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS IN OBTAINING SSI BENEFITS.

(a) Establishment of Demonstration Program.—

(1) In order to demonstrate and test the feasibility of developing and using special procedures to ensure that all homeless individuals in shelters fully and clearly understand their rights to benefits under the SSI program and other programs established under the Social Security Act, to provide such individuals with all possible assistance in applying for such benefits and obtaining the information and documentation necessary for that purpose, and to ensure that all such individuals receive the benefits to which they are entitled under such programs, up to 10 States may each create an SSI Outreach Team Project in accordance with this section. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary of Health and Human Services (in this section referred to as the Secretary) shall prescribe.

(2)(A) The Secretary shall consider all applications received from States desiring to conduct SSI Outreach Team Projects under this section and shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this section.

(B) Of the projects approved under paragraph (1), 5 shall commence their operations during the fiscal year 1988 and the remainder shall commence their operations during the fiscal year 1989, as designated by the Secretary at the time of such approval.

(3) The Secretary shall make grants to the States whose applications are approved under paragraph (2) in order to cover the costs incurred by such States in carrying out their SSI Outreach Team Projects, including the costs of staff, administration, transportation, and other necessary expenses. The cost of each such project shall not exceed $250,000 a year, except that the Secretary may in any particular case permit the State to incur costs in excess of such amount (and increase the amount of the grant accordingly), to the extent that appropriated funds are available therefor, if the State satisfactorily demonstrates that higher costs must be incurred in order to properly serve the homeless within the project area.

(b) Waivers.—The Secretary may waive any and all requirements, restrictions, and limitations (contained in title XVI of the Social Security Act or in regulations prescribed thereunder, or in any other law or regulation) which could prevent or hinder the operation of the demonstration program under this section.

(c) Information and Reports; Evaluation.—

(1) Each State having an approved SSI Outreach Team Project shall periodically submit to the Secretary such information (with respect to the project) as may be necessary to enable the Secretary to evaluate such project in particular and the demonstration program under this section in general.

(2)(A) The Secretary shall from time to time (but not less often than annually) submit to the Congress a full and complete report on the program under this section, together with a detailed evaluation of such program and of the projects thereunder along with such recommendations as may be deemed appropriate. Such evaluation and such recommendations shall be designed to serve as a basis for determining whether (and to what extent) the activities and procedures included in the demonstration program under this section should be continued, expanded, or modified, or converted (with or without changes) into a regular feature of permanent law.

(B) The criteria used by the Secretary in evaluating the program and the projects thereunder shall not be limited to those which would normally be used in evaluating programs and activities of the kind involved, but shall fully take into account the special circumstances of the homeless and their need for personalized attention and follow-through assistance, and shall emphasize the extent to which the procedures and assistance made available to applicants under such projects are recognizing those circumstances and meeting that need.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

(1) the sum of $1,250,000 for the fiscal year 1988;

(2) the sum of $2,500,000 for the fiscal year 1989; and

(3) such sums as may be necessary for each fiscal year thereafter.

SEC. 4118. MODIFICATION OF INTERIM ASSISTANCE REIMBURSEMENT PROGRAM.

(a) IN GENERAL.—Section 1631(g)(2) of the Social Security Act (42 U.S.C. 1383(g)(2)) is amended in the first sentence by striking "at the time the Secretary makes the first payment of benefits" and inserting in lieu thereof "at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3)".

(b) DEFINITION OF INTERIM ASSISTANCE.—Section 1631(g)(3) of such Act (42 U.S.C. 1383(g)(3)) is amended—

(1) by inserting "(A)" after "basic needs"; and

(2) by inserting before the period at the end the following: ", or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective with the 13th month following the month in which this Act is enacted, or, if sooner, with the first month for which the Secretary of Health and Human Services determines that it is administratively feasible.

SEC. 4119. DEMONSTRATION PROGRAM TO PROVIDE SELF-EMPLOYMENT ALLOWANCE FOR ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

(1) apply to participate in such program, and

(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

(b) SELECTION OF STATES.—

(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

(B) existing local market conditions and the business climate for new, small business enterprises in the State;

(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

(E) the design of the evaluation to be applied by the State to the program; and

(F) the standards which are to be utilized by the State for the the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed.

(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

(c) PROVISIONS OF AGREEMENT.—Any agreement entered into with a State under this section shall provide that—

(1) each individual who is an eligible individual with respect to any benefit beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation,

as long as the individual meets the requirements applicable under this section to such individual;

(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total

amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

(5) the State shall implement a program that—

(A) is approved by the Secretary;

(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

(D) otherwise meets the requirements of this section; and

(6) the State, from its general revenue funds, shall—

(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

(d) EVALUATION.—

(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

(e) FINANCING.—

(1) Notwithstanding section 303(a)(5) of the Social Security Act and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Ex-

tended Unemployment Compensation Act of 1970, payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

(g) REPORT TO CONGRESS.—

(1) Not later than two years after the date of enactment of this Act, the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

(A) information on the extent to which this section has been utilized;

(B) an analysis of any barriers to such utilization; and

(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

(2) Not later than four years after the date of the enactment of this Act, the Secretary shall submit a final report to the Congress on such program.

(h) FRAUD AND OVERPAYMENTS.—

(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

(A) ineligible for further assistance under this section; and

(B) subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

(ii) such repayment would be contrary to equity and good conscience.

(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(i) DEFINITIONS.—For purposes of this section—

(1) the term "eligible individual" means, with respect to any benefit year, an individual who—

(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

(C) submits an application to the State agency for a self-employment allowance under this section; and

(D) meets applicable State requirements,

except that not more than (i) 3 percent of the number of individuals eligible to receive their regular compensation in a State at beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

(2) the term "self-employment allowance" means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

(3) the terms "compensation", "extended compensation", "regular compensation", "benefit year", "State", and "State law", have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1979.

SEC. 4120. MODIFICATION OF EFFECTIVE DATE WITH RESPECT TO STATE COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING EXTENDED BENEFITS UNDER THE UNEMPLOYMENT INSURANCE PROGRAM.

(a) In General.—Section 1024(b) of the Omnibus Reconciliation Act of 1980 is amended to read as follows:

"(b)(1) Except as provided in paragraph (2), the amendment made by this section shall apply with respect to weeks of unemployment beginning after October 1, 1981.

"(2) In the case of a State the legislature of which does not meet in a regular session during calendar year 1981, the amendment made by this section shall apply with respect to weeks of unemployment beginning after October 31, 1982.".

(b) Effective Date.—The amendment made by subsection (a) shall be effective as if included in the enactment of the Omnibus Reconciliation Act of 1980.

SEC. 4121. ASSISTANCE TO HOMELESS AFDC FAMILIES.

The Secretary of Health and Human Services shall take no action on or after December 1, 1987, (by regulation or otherwise) to prevent a State, prior to October 1, 1988, from including in its standard of need with respect to applicants for or recipients of aid under the State plan approved under section 402 of such Act (as a special need for individuals who would otherwise be homeless) an amount for shelter and related needs that varies according to geographic location, family circumstance, or the type of living accommodation occupied.

SUBTITLE B—DESCRIPTION OF REVENUE PROVISIONS

SUBTITLE B: DESCRIPTION OF REVENUE PROVISIONS

A. ACCOUNTING PROVISIONS

1. Repeal of Vacation Pay Reserve (sec. 4501 of the bill [1] and sec. 463 of the Code)

Present Law

Under present law, an accrual method taxpayer generally is permitted a deduction for the taxable year in which all the events have occurred that determine the fact of a liability and the amount thereof can be determined with reasonable accuracy (the "all events" test). In determining whether an amount has been incurred with respect to any item during the taxable year, all events that establish liability for such amount are not treated as having occurred any earlier than the time economic performance occurs (sec. 461(h)). With respect to a liability that arises as a result of another person's providing services to the taxpayer (such as the liability to provide vacation pay in exchange for services by an employee), economic performance generally occurs when such other person provides the services.

In order to ensure the proper matching of income and deductions in the case of deferred benefits (such as vacation pay earned in the current taxable year, but paid in a subsequent year) for employees, an employer generally is entitled to claim a deduction for the taxable year of the employer in which ends the taxable year of the employee in which the benefit is includible in gross income (sec. 404(b)). This rule applies to deferred benefits without regard to the economic performance rules. Consequently, an employer is entitled to a deduction for vacation pay for the taxable year of the employer in which ends the earlier of the taxable year of the employee for which the vacation pay (1) vests (if the vacation pay plan is funded by the employer), or (2) is paid.

An exception to this rule applies to amounts that are paid within 2-1/2 months after the close of the taxable year of the employer in which the vacation pay is earned. Such amounts are not subject to the deduction-timing rules applicable to deferred benefits, but are subject to the general rules under which an employer is entitled to a deduction when economic performance occurs (i.e., when the services of the employee for which vacation pay is earned are performed). Amounts paid within 2-1/2 months after the close of the employer's taxable year in which the all events test and the economic performance requirement are satisfied generally will be deductible for the such taxable year even though the employee does not include the benefit in income for such taxable year.

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[1] In the headings throughout this explanation, section citations to the bill refer to the bill as it would be amended by the leadership amendment.

Under a special rule of present law, an employer may make an election under section 463 to deduct an amount representing a reasonable addition to a reserve account for vacation pay (contingent or vested) that is paid during the current taxable year or within 8-1/2 months after the close of the taxable year of the employer with respect to which the vacation pay was earned by the employees.

Reasons for Change

The special rules under present law relating to the reserve for accrued vacation pay create a disparity in tax treatment between accrued vacation pay and other deferred benefits. The timing of deductions for vacation pay should not be more favorable than the timing of deductions for other deferred benefits.

Explanation of Provision

The special rule that permits taxpayers a deduction for additions to a reserve for vacation pay would be repealed. Accordingly, under the amendment, deductions for vacation pay generally would be allowed in any taxable year for amounts paid during the year plus vested vacation amounts paid or funded within 2-1/2 months after the end of the year.

Effective Date

The provision would be effective for taxable years beginning after December 31, 1987. A change from the reserve method of accounting for vacation pay to the method required by the amendment is treated as a change in method of accounting that is initiated by the taxpayer and made with the consent of the Secretary of the Treasury. The net amount of the adjustment required by the change in method of accounting is required to be taken into account over a period not to exceed 4 taxable years. The amendment specifies the percentage of the adjustment that is required to be taken into account for each taxable year in the 4-year period. If Rev. Proc. 84-74, 1984-2 C.B. 736, would require the adjustment to be taken into account over a period of less than 4 taxable years, the adjustment is to be taken into account ratably over the shorter period.

2. Repeal of Installment Method for Dealers (sec. 4502 of the bill and secs. 453, 453A, and 453C of the Code)

Present Law

Under present law, a taxpayer who sells property ordinarily must recognize gain or loss at the time of the sale. However, a taxpayer who is eligible to use the installment method may defer the payment of tax and recognize gain from a sale of property in proportion to the payments received.

In general, the installment method may be used to report gain from the sale of personal property by dealers in personal property who regularly sell on the installment plan or from the sale of other property where at least one payment is to be made after the end of the taxable year of the sale.

Under the installment method, in any taxable year, a taxpayer recognizes income resulting from a disposition of property equal to an amount that bears the same ratio to the payments received in that year that the gross profit under the contract bears to the total contract price ("the gross profit ratio"). Payments taken into account for this purpose generally include cash or other property (including foreign currency and obligations of third parties), marketable securities, certain assumptions of liabilities, and evidences of indebtedness of the purchaser that are payable on demand or are readily tradable.

Use of the installment method generally is limited under the so-called "proportionate disallowance rule" for dealer sales of real property and dealer sales of personal property eligible to be reported on the installment method, as well as for sales of real property used in the taxpayer's trade or business or held for the production of rental income where the selling price of such real property is greater than $150,000. Under the proportionate disallowance rule, a pro rata portion of the taxpayer's indebtedness is allocated to, and is treated as a payment on, the installment obligations of the taxpayer.

Use of the installment method is not allowed for sales pursuant to a revolving credit plan and for sales of publicly traded property. In addition, the installment method may not be used for purposes of the alternative minimum tax for sales that are subject to the proportionate disallowance rule.

At the election of the seller, installment obligations arising from certain sales of residential lots and "timeshares" are not subject to the proportionate disallowance rule. Rather, such taxpayers may compute their tax liability under the installment method and are required to pay interest on the amount of deferred tax attributable to the use of the installment method. In addition, the installment method may be used for purposes of the alternative minimum tax for sales of residential lots and "timeshares" if interest is paid on the amount of the deferred tax.

Reasons for Change

In general, the underlying reason for allowing the reporting of gain on the installment method for Federal income tax purposes is that the seller may be unable to pay tax currently because no cash may be available until payments under the installment obligation are received. It is believed that dealer sales of property for notes or accounts receivable do not create the significant cash-flow problems that the installment method is designed to alleviate because a dealer generally is able to finance receivables. The repeal of the installment method for dealer sales will end the ability of a dealer to defer tax on a sale of property by taking back a note or account receivable that is payable in a future year.

Explanation of Provision

The amendment repeals the installment method for dispositions of property by dealers ("dealer dispositions") effective for dispositions occurring after December 31, 1987. Generally, all payments to be received from a dealer disposition of property are treated as received in the year of disposition.

A dealer disposition is defined for purposes of the repeal of the installment method as any disposition of personal property by a person who regularly sells or otherwise disposes of property on the installment plan. A dealer disposition also includes any disposition of real property that is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business. A dealer disposition does not, however, include certain dispositions of residential lots or "timeshares" if the taxpayer elects to pay interest on the amount of deferred tax attributable to the use of the installment method. Additionally, a dealer disposition does not include a disposition of property used or produced in the trade or business of farming.

The installment method rules applicable to dispositions of residential lots or "timeshares" with respect to which interest is paid or dispositions of property used or produced in the trade or business of farming are not affected by the amendment. Thus, a disposition of such property on the installment plan will be subject to the current rules applicable to dealers using the installment method.

Effective Date

The repeal of the installment method for dealer dispositions is effective for dispositions occurring after December 31, 1987. The treatment of an installment obligation arising out of a dealer disposition occurring before March 1, 1986, is not affected by this provision.

An applicable installment obligation arising out of a dealer disposition occurring after February 28, 1986, and before January 1, 1988, is subject to the proportionate disallowance rule for taxable years ending after December 31, 1986, and beginning before January 1, 1988. Any gain from an installment obligation arising out of a dealer disposition occurring after February 28, 1986, and before January 1, 1988, that remains to be recognized as of the first day of the first taxable year beginning after December 31, 1987, is not to be recognized as payments are received (or treated as received under the proportionate disallowance rule) in a later taxable year. Instead, the amount of the gain that remains to be recognized from such installment obligations is to be taken into account as a section 481(a) adjustment. The amount of the section 481(a) adjustment is to be taken into account under the principles of Rev. Proc. 84-74, 1984-2 C.B. 736, but the adjustment period generally is 4 taxable years rather than 6 taxable years. In determining the period that the adjustment is to be taken into account, the application of the proportionate disallowance rule is not to be treated as a new method of accounting.

The amendment does not affect the transition relief provided at the time the proportionate disallowance rule was enacted.

3. Treatment of Past Service Pension Costs Under Uniform Capitalization Rules (sec. 4503 of the bill and sec. 263A of the Code)

Present Law

In general, uniform capitalization rules govern the inclusion in inventory or capital accounts of all costs incurred in manufacturing, construction, and other types of activities involving the production of real or tangible personal property, or incurred in acquiring or holding property for resale. In the legislation mandating a uniform set of capitalization rules, Congress directed the Treasury Department to model the regulations implementing these rules after the regulations issued under section 451, dealing with capitalization of costs in connection with extended period long-term contracts.

The extended period long-term contract regulations require capitalization of all direct costs and an allocable portion of indirect costs such as general and administrative and overhead costs. Temporary and proposed regulations issued by the Treasury Department provide that contributions to a pension or annuity plan are not subject to the uniform capitalization rules to the extent they represent past service costs within the meaning of section 412 (containing rules for actuarial funding of pension plans).[2] Such costs are, subject to other limitations in the Code, currently deductible. If the taxpayer's actuarial funding method does not distinguish between current and past service costs, all pension costs must be treated as current service costs, which are subject to capitalization.

Reasons for Change

For purposes of the uniform capitalization rules, pension costs incurred by a taxpayer that are deemed to relate to past services under the Code's actuarial funding rules should be treated in the same manner as costs deemed to relate to current services. Both types of costs are costs that are necessarily recovered out of the proceeds from the sale of property produced or held in the year the costs are incurred. Thus, consistent with the uniform capitalization rules' objective of matching expenses with the related income, past as well as current service costs should be subject to capitalization.

Explanation of Provision

Under the amendment, past service costs will be subject to the uniform capitalization rules. Thus, an allocable portion of all otherwise deductible pension costs, whether relating to current or past services, will be included in the basis of the property that is produced or held for resale.

Effective Date

The provision will apply to taxable years beginning after December 31, 1987. The amount of any section 481 adjustment required by the amendment (that is, the adjustment reflecting pension costs deducted by a taxpayer in taxable years beginning before January 1, 1988) must be included in income over a period not exceeding four years.

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[2] Temp. and Prop. Reg. sec. 1.263A-1(b)(2)(v)(H)(1).

4. Certain Farm Corporations Required to Use the Accrual Method of Accounting (sec. 4504 of the bill and sec. 447 of the Code)

Present Law

Entities engaged in the trade or business of farming generally may use the cash method of accounting for such trade or business. A corporation, or a partnership with a C corporation as a partner, that has gross receipts in excess of $1 million for any taxable year beginning after 1975 must use an accrual method of accounting, unless it is a "family corporation" (sec 447). In general, a "family corporation" is a corporation 50 percent or more of whose stock is owned by members of the same family (sec. 447(c)(2)). Certain closely-held corporations substantially owned by two or three families on October 4, 1976, and at all times thereafter also qualify as a "family corporation" (sec. 447(h)).

A tax shelter engaged in the trade or business of farming may not use the cash method of accounting, regardless of whether or not it also is a "family corporation."

Reasons for Change

It is felt that any corporation, or partnership with a C corporation as a partner, that is engaged in the trade or business of farming and that has gross receipts in excess of $25 million should be required to use the accrual method of accounting. It is believed that an accrual method of accounting will more accurately reflect the income of such an entity; and that such large entities, whether closely held or not, are sufficiently sophisticated to keep their books and records using an accrual method.

Explanation of Provision

In general

A family corporation is required to use an accrual method of accounting unless, for each prior taxable year beginning after December 31, 1985, such corporation (and any predecessor corporation) did not have gross receipts exceeding $25 million. Gross receipts for any taxable year which is a year of less than 12 months must be annualized in order to determine if they exceed $25 million. A family corporation includes those family-owned corporations and those closely held corporations that are not required by present law to use the accrual method of accounting, regardless of size (sec. 447(c)(2) and sec. 447(h) of present law).

Attribution rules

In determining the amount of gross receipts of a family corporation, certain attribution rules apply. In the case of a family corporation that is part of a controlled group (within the meaning of sec. 1563(a)), a percentage of the gross receipts for the taxable year of other members of such controlled group may be allocated to the family corporation. The percentage used in allocating such gross receipts is equal to the percentage of the fair market value of stock in such other member held directly or indirectly by the family corporation on the last day of the taxable year of such other member. For this purpose, stock excluded under section 1563(c) is not considered.

For example, a father and his son own 100 percent of Corporation A (a family corporation) and 60 percent of Corporation B. Corporation A owns an additional 20 percent of Corporation B. The remaining 20 percent of Corporation B is held by an unrelated party. Corporation A and Corporation B are members of the same controlled group. Eighty percent (20 percent direct ownership and 60 percent indirect ownership) of the gross receipts of Corporation B will be included with the gross receipts of Corporation A for the purpose of determining whether Corporation A has gross receipts in excess of $25 million.

It is not intended that the attribution of gross receipts from one member of a controlled group to another member result in such receipts being taken into account more than once. It is anticipated that the Secretary of the Treasury will issue regulations accomplishing this result. For example, assume that Corporation A in the example in the preceding paragraph sells a calf to Corporation B for $100. Corporation B feeds the calf and sells it to unrelated parties for $250. The gross receipts of Corporation B attributable to Corporation A from this transaction would be 80 percent of the difference between $250 and $100, since the $100 of receipts attributable to that stage of the calf's development while held by Corporation A already is being taken into account in the gross receipts of Corporation A.

If a family corporation owns, directly or indirectly, any interest in a partnership, estate, trust, or other pass-through entity, the family corporation must take into account its proportionate share of the gross receipts of such a pass-through entity in determining the gross receipts of the family corporation.

Suspense account

If any family corporation is required by this provision to change its method of accounting, such corporation shall not be required to take into income so much of the adjustment under section 481 as is used to establish the opening balance of a suspense account. The initial opening balance of the suspense account is the lesser of the net adjustment that otherwise would have been required to be taken into account under section 481 as of the beginning of the year of change or the amount of such net adjustment determined as if the change were made as of the beginning of the preceding taxable year. The portion of the adjustment under section 481 that is not used to establish the suspense account is taken into income in the year of change.

For example, a calendar year family corporation is required to change to the accrual method of accounting effective for its taxable year beginning January 1, 1988. The net adjustment under section 481 as of January 1, 1988 is $100,000. The net adjustment adjustment under section 481 as of January 1, 1987 was $95,000. The opening balance of the suspense account will be $95,000 and $5,000 ($100,000 - $95,000) will be required to be included in income in the taxable year beginning January 1, 1988.

The amount placed in the suspense account is required to be taken into income upon the occurrence of certain events. If the taxpayer fails to meet the definition of a family corporation, the amount of the suspense account is to be taken into income in the taxable year in which the corporation ceases to be a family corporation. Also, if the gross receipts of the corporation attributable to farming for any taxable year decline to an amount below the gross receipts attributable to farming for the last taxable year for which the cash method of accounting was allowed, a portion of the suspense account may be taken into income.[3] The portion to be taken into income is equal to the current balance of the suspense account multiplied by a fraction the numerator of which is the gross receipts for the current taxable year and the denominator of which is the lesser of (a) the gross receipts of the taxpayer for the taxable year preceeding the year of change or (b) the gross receipts for the most recent year in which a portion of the suspense account was taken into income under this rule.

Effective Date

The provision is effective for taxable years beginning after December 31, 1987.

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[3] For this purpose, gross receipts from taxable years of less than 12 months will be annualized.

B. ESTIMATED TAX PROVISIONS

(Secs. 4511-4513 of the bill, sec. 1541 of the Reform Act, and secs. 3402, 6654, and 6655 of the Code)

1. Corporate Estimated Tax Reform (sec. 4511 of the bill)

Present Law

Under present law, a corporation that fails to pay an installment of estimated income tax on or before the due date generally is subject to a penalty computed at the rate of interest for tax underpayments. The penalty may not be waived. The penalty is computed by applying the underpayment interest rate to the amount of the underpayment of the installment for the period of the underpayment. The amount of the underpayment is the difference between the payments made on or before the due date of each installment and 90 percent of the total tax shown on the return for the year, divided by the number of installments that should have been made. The penalty on underpayments of estimated tax that are between 80 percent and 90 percent of the actual tax due is imposed at three-quarters of the full rate.

There are three exceptions to the penalty. No penalty is imposed upon a corporation if total tax payments for the year equal or exceed installments based on (1) the preceding year's tax liability, if a return showing a liability for tax was filed for the preceding year; (2) the tax computed by using the facts shown on the prior year's return under the current year's tax rates; or (3) 90 percent of the taxes which would be due if certain income already received during the current year was annualized. Large corporations may not use exceptions (1) and (2) described above. A large corporation is defined as a corporation having at least $1 million of taxable income in any of the three prior taxable years. No penalty is imposed where the tax is less than $40.

Reasons for Change

Although the individual estimated tax rules were consolidated and simplified in 1984, no similar consolidation and simplification was done for the corporate estimated tax rules; it is appropriate to do so at this point. Also, because of the difficulties many large corporations experience in computing accurately their estimated tax payments for the first quarter, it is appropriate to provide for them for that quarterly payment the same safe harbor that is currently available to small corporations.

Explanation of Provision

The amendment consolidates all the corporate estimated tax rules into one section of the Code, similar to the provision enacted for individuals in 1984. Also, several modifications are made to present law.

The underpayment penalty with respect to any installment applies to the difference between payments made by the due date of the installment and the lesser of an installment based on (1) 90 percent of the tax shown on the return; or (2) 100 percent of the tax shown on the preceding year's return. As under present law, exception (2) generally does not apply to a large corporation, except that a large corporation can use that exception for purposes of making its first estimated tax payment for any taxable year. Thus, both large and small corporations may base their first estimated tax payment of any taxable year upon 100 percent of the tax shown on the preceding year's return. A special transition rule provides that, for taxable years beginning in 1988 only, a large corporation can use that exception for purposes of making its first and second estimated tax payments. In determining whether a corporation is a large corporation (i.e., whether its taxable income exceeds $1 million), net operating loss and capital loss carryforwards and carrybacks are disregarded. The safe harbor based on the previous year's facts and the current year's rates is eliminated.

In addition, the full rate of the penalty is imposed with respect to any payment only to the extent the total payments for the year up to the required installment are below 90 percent of the taxes which would be due if the income already received during the current year was placed on an annual basis. Thus, the "cliff" effect of the penalty under present law is eliminated. Additionally, the reduced rate of the penalty for underpayments that are between 80 and 90 percent is eliminated. Any reduction in an estimated tax payment or payments resulting from using the annualization exception must be made up in the next payment in that taxable year for which the corporation does not use the annualization exception.

Finally, no penalty is imposed if the tax for any taxable year is less than $500.

Effective Date

This provision applies to taxable years beginning after December 31, 1987.

2. Revised Withholding Certificates Required to be Put Into Effect More Promptly (sec. 4512 of the bill)

Present Law

If an employee furnishes to his or her employer a withholding allowance certificate (Form W-4 or W-4A) that replaces an existing certificate, the employer must make the certificate effective no later than the first status determination date that is at least 30 days after the date the employee furnishes the certificate to the employer. The status determination dates are January 1, May 1, July 1, and October 1 of each year. For example, if an employee furnishes a replacement withholding allowance certificate to his or her employer on June 2, the employer must make that certificate effective no later than October 1.

Employers may elect to make replacement certificates effective earlier than they are required to statutorily; most employers elect to do so.

Reasons for Change

It is appropriate to reduce the amount of time before a replacement withholding certificate must become effective.

Explanation of Provision

Employers will be required to give effect to replacement withholding allowance certificates (Form W-4 or W-4A) no later than the start of the first payroll period ending on or after the thirtieth day after the day on which the employee furnishes the certificate to the employer. Employers are permitted to continue to elect to give effect to replacement withholding allowance certificates on any date between the date it is furnished by the employee and the statutorily mandated effective date.

Effective Date

The provision applies to replacement withholding allowance certificates furnished after the day 30 days after the date of enactment of the bill.

3. Estimated Tax Penalties for 1987 (sec. 4513 of the bill)

a. Delay of increase in current year liability test for individuals

Present Law

Individuals owing income tax who do not make estimated tax payments are generally subject to a penalty (Code sec. 6654). In order to avoid the penalty, individuals must make quarterly estimated tax payments that equal at least the lesser of 100 percent of the prior year's tax liability or 90 percent of the current year's tax liability. Amounts withheld from wages are considered to be estimated tax payments.

The Tax Reform Act of 1986 increased from 80 to 90 percent the proportion of the current year's tax liability that taxpayers must pay to avoid the penalty. This was effective for taxable years beginning after December 31, 1986.

Reasons For Change

It is appropriate to modify the estimated tax rules for individuals for 1987, due to the difficulties a number of individuals had with Form W-4 and with other provisions of the 1986 Act.

Explanation of Provision

The amendment delays for one year this increase from 80 to 90 percent. Thus, for taxable years beginning before January 1, 1988, individuals may avoid the estimated tax penalty by making quarterly estimated tax payments that equal at least the lesser of 100 percent of the prior year's tax liability or 80 percent of current year's tax liability. For taxable years beginning after December 31, 1987, individuals may avoid the estimated tax penalty by making quarterly estimated tax payments that equal at least the lesser of 100 percent of the prior year's tax liability or 90 percent of the current year's tax liability.

Effective Date

The increase from 80 to 90 percent is effective for taxable years beginning after December 31, 1987 (instead of taxable years beginning after December 31, 1986).

b. Corporations may use 1986 tax to determine certain estimated tax installments due before July 1, 1987

Present Law

No estimated tax penalty is imposed upon a corporation with respect to any installment if that installment plus all prior installments for the year are based on the lesser of (1) the preceding year's tax liability, if a return showing a liability for tax was filed for the preceding year; (2) the tax computed by using the facts shown on the prior year's return under the current year's tax rates; or (3) 90 percent of the taxes which would be due if certain income already received during the current year were placed on an annual basis. Large corporations may not use exceptions (1) and (2) described above. A large corporation is defined as a corporation having at least $1 million of taxable income in any of the three prior taxable years.

Present law does not give explicit authority to the Treasury to provide alternative estimated tax rules for corporations.

The Treasury has issued regulations, applicable to estimated tax payments due before July 1, 1987, that permit corporations to base those estimated payments on 120 percent of 1986 taxable income with certain modifications.

Reasons for Change

Because of the numerous changes made by the Tax Reform Act of 1986, some corporations had difficulty in accurately computing their estimated tax payments for the first part of 1987. Therefore, it is appropriate to modify the estimated tax penalties for those payments.

Explanation of Provision

Two safe harbors are provided for corporate estimated tax payments due before July 1, 1987. First, all corporations, including large corporations, are permitted to base those estimated tax payments on 100 percent of the 1986 tax liability. Second, statutory authorization is provided for the safe harbor provided in the Treasury regulations.

Under the first safe harbor, no penalty for the underpayment of estimated tax for a taxable year beginning in 1987 will be imposed on a large corporation (as defined in sec. 6655(i)(2) of the Code) for any payment due on or before June 15, 1987, if the corporation's estimated tax payments meet the present law requirements (of sec. 6655(d)(1)) applicable to other corporations allowing payments to be based on the tax shown on the prior year's return. Thus, large corporations are expressly authorized to utilize the estimated tax safe harbor of paying the preceding year's tax liability for estimated tax installments for taxable year 1987 due on or before June 15, 1987. A corporation may take advantage of this rule only to the extent that the underpayment of estimated tax is paid on or before the last date prescribed for payment of the most recent installment of estimated tax due on or before September 15, 1987. This relief is available for the first two payments of a calendar year corporation and for the first payment of a fiscal year corporation whose taxable year begins on or before March 1, 1987.

Thus, a calendar year corporation may avoid an estimated tax penalty by making the April 15 and June 15 installments based on 100 percent of the preceding year's liability and by making the September 15 installment based on 90 percent of the current year's tax liability (and by paying any shortfall from prior payments attributable to the difference between the 100 percent test and the 90 percent test as part of the September 15 installment).

Effective Date

The provisions are effective for corporate estimated tax installments for 1987 that were due before July 1, 1987.

C. CORPORATE TAX PROVISIONS

1. Certain Earnings and Profits Adjustments Not To Apply For Certain Purposes (Overrule *Woods Investment Co.*) (sec. 4521 of the bill and secs. 1503 and 301(f) of the Code)

Present Law

In general, an affiliated group of corporations may elect to file a consolidated return that aggregates the income and deductions of the common parent and its subsidiaries. An affiliated group generally includes a domestic corporation and its domestic subsidiaries connected in a chain of at least 80-percent ownership. The Code grants the Treasury Department broad authority to issue regulations governing the computation of the tax liability of an affiliated group of corporations filing a consolidated return.

In 1966, the Treasury Department issued revised consolidated return regulations requiring adjustment of a parent corporation's basis in the stock of a subsidiary by reference to changes in the earnings and profits of the subsidiary. The regulations require a parent corporation to increase its basis in the stock of a subsidiary by the amount of the undistributed net earning and profits of the subsidiary for the taxable year, and to reduce its basis in such stock by the amount of any deficit in earnings and profits, among other adjustments. At the time these regulations were issued, differences between earnings and profits and taxable income were essentially permanent as opposed to timing differences. The result was that adjustments to basis of the assets of a subsidiary were reflected immediately as adjustments to the parent corporation's basis in the stock of the subsidiary.

Subsequently, Congress enacted amendments to the provisions of the Code defining earnings and profits. As a result of these amendments, certain deferral amounts affected earnings and profits at a different rate than they affected a corporation's taxable income. For example, earnings and profits were reduced only by the amount of straight-line depreciation, even though accelerated depreciation was used for purposes of computing taxable income. Similarly, gain reported on the installment method and income reported under the completed contract method were included in earnings and profits at a faster rate than for taxable income purposes.

The purpose of these amendments to the definition of earnings and profits was to prevent corporations with economic profits from making distributions to individual shareholders that would otherwise constitute tax-free returns of capital, or capital gains taxed at a preferential rate, to the shareholder. In a consolidated return context, however, the effect of applying these amendments in computing basis adjustments was to create a disparity between the rate at which these items reduced or increased a parent's basis in the stock of its subsidiary and the rate they reduced or increased the group's consolidated taxable income. Because of these earnings and profits adjustments, a parent corporation could sell stock in a subsidiary and recognize an artificially reduced gain, or an artificial loss.

In *Woods Investment Co.* v. *Commissioner*, 85 T.C. 274 (1985), the Tax Court rejected the Internal Revenue Service's argument that the taxpayer should not be allowed to apply these amendments for purposes of computing basis adjustments because the effect was to allow the taxpayer a double deduction. The court held the Service was bound by a literal application of the statutory definition of earnings and profits and its own regulations requiring basis adjustments based on earnings and profits. The Service subsequently announced that it would not appeal this decision and would not reassert the position taken in *Woods* against other taxpayers (Announcement 86-32). It nonetheless took the position that its position in *Woods* was correct, and stated that it was considering modification of the consolidated return regulations to prevent understatement of gain in that situation and other situations.

A similar issue arises in a consolidated return context where an insolvent subsidiary realizes cancellation of indebtedness income. The earnings and profits of the subsidiary may be increased by the amount of such income, even though the income is excluded from the subsidiary's taxable income. If so, the parent corporation's basis in the stock is increased (or its "excess loss account" or negative basis is reduced) by an amount that has not been reflected in consolidated taxable income.

A benefit similar to that at issue in the *Woods* case may exist where the distributor and distributee do not file a consolidated return.

Special rules prevent the occurrence of these distortions in certain circumstances.[4] If a 20-percent or more corporate shareholder receives a distribution from another corporation that would otherwise qualify for the dividends received deduction, the taxable income of the shareholder (and its adjusted basis in the stock of the distributing corporation) is determined by ignoring certain adjustments otherwise required in determining the earning and profits of the distributing corporation (sec. 301(f)). That is, the earnings and profits treatment of the items is conformed to the taxable income treatment. These special conformity rules do not apply, however, to depreciation.

Reasons for Change

The present consolidated return regulations, as applied in the *Woods* case, confer an unwarranted and unintended tax benefit. Under present law, the adjustment in the basis of a subsidiary's stock fails to account for the tax benefits realized by the consolidated group during the subsidiary's affiliation and also fails to require the group to pay tax on the economic profit received when a subsidiary is sold. The purpose of the statutory changes to the earnings and profits provisions was to ensure that distributions of economic profits that exceeded taxable income would be taxed to individual shareholders as dividends. Providing a corresponding basis adjustment for purposes of determining gain or loss on a sale of the stock is inappropriate.

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[4] It is unclear whether and to what extent these special rules apply in a consolidated return context, but it is understood that taxpayers generally take the position they do not.

The provision of present law modifying the definition of earnings and profits in the case of distributions to 20-percent or more corporate shareholders should appropriately apply to depreciation as well as to the items specified in section 312(n).

Explanation of Provision

Under the amendment, solely for purposes of determining gain or loss on disposition, a parent corporation's basis in the stock of a subsidiary with which it files a consolidated return is to be determined by computing earnings and profits of the subsidiary without regard to sections 312(k) and (n) or any prior corresponding provision. Thus, the parent's basis for purposes of determining gain or loss on disposition of the stock will be computed as if, throughout the period of the subsidiary consolidation with the parent, the subsidiary's earnings and profits had been computed without regard to the special adjustments for depreciation and other items.[5]

In addition, the amendment provides that earnings and profits for this purpose does not include any cancellation of indebtedness income of the subsidiary excluded under section 108 to the extent such income did not reduce basis of property or other tax attributes. No inference is intended as to prior law.

Finally, the amendment expands the provision modifying the definition of earnings and profits in the case of distributions to a 20-percent or more corporate shareholder to include adjustments for accelerated depreciation. It is intended that this provision (sec. 301(f)) will apply only where the distribution is between corporations not filing a consolidated return.

Effective Date

The amendment to the rules relating to adjustments in the stock in a consolidated subsidiary generally applies to stock disposed of after October 15, 1987. However, the amendment does not apply to dispositions pursuant to a written contract binding on October 16, provided the disposition is completed before January 1, 1989. The computation of gain or loss on dispositions subject to the provision will thus be computed taking into account the principles of the amendment during the entire period the subsidiary filed a consolidated return with the selling corporation, regardless of whether the subsidiary filed a consolidated return with the selling corporation in the year of the disposition or was eligible to do so.

The amendment to section 301(f) generally applies to distributions after October 15, 1987. However, the amendment does not apply for purposes of determining gain or loss on a disposition of the stock, in the case of dispositions pursuant to a written contract binding on October 16, provided the disposition is completed before January 1, 1989. For purposes of determining the earnings and profits after October 16 in the case of dispositions subject to the amendment, the amendment is deemed to have been in effect for all prior periods, whether before, on, or after that date. However, the amendment does not affect the determination whether any distribution on or before October 16, 1987, was a dividend, or the amount of any reduction in accumulated earnings and profits on account of any such distribution.

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[5] These modifications to the rules for determining earnings and profits for investment adjustment purposes are not intended to affect the authority of the Treasury Department to require in the consolidated regulations that earnings and profits (computed under the general rules of section 312) be deemed distributed up the entire chain of affiliated corporations to the common parent on an annual basis.

2. Benefits of Graduated Corporate Rates Not Allowed To Personal Service Corporations (sec. 4522 of the bill and sec. 11 of the Code)

Present Law

Under present law, corporations are subject to a tax at the rate of 34 percent. However, for corporations with taxable income below $335,000, graduated rates are provided. These rates are 15 percent on taxable income not over $50,000, and 25 percent on taxable income over $50,000 but not over $75,000, with the benefits of these lower rates phased out as taxable income increases from $100,000 to $335,000.

Reasons for Change

The personal service income of corporations owned by its employees is taxed to the employee-owners at the individual graduated rates as it is paid out as salary. It is inappropriate to allow the retained earnings to be taxed at the lower corporate graduated rates.

Explanation of Provision

The taxable income of a personal service corporation (as defined in section 448(d)(2) relating to the cash method of accounting) will be taxed at a flat rate of 34 percent. For this purpose, a personal sevice corporation is a corporation substantially all the activites of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and substantially all the stock of which is held by the employees performing services for the corporation.

Effective Date

The provision applies to taxable years beginning after December 31, 1987.

D. PARTNERSHIP PROVISIONS

1. Treatment of Publicly Traded Partnerships Under the Passive Loss Rule (sec. 4531 of the bill and sec. 469 of the Code)

Present Law

Under present law, deductions from passive trade or business activities (within the meaning of the passive loss rule (sec. 469)), to the extent they exceed income from such passive activities, generally may not be deducted against other income. Similarly, credits from passive activities generally are limited to the tax attributable to the passive activities. Suspended losses and credits are carried forward and treated as deductions and credits from passive activities in the next year. Suspended losses from an activity are allowed in full when the taxpayer disposes of his entire interest in the activity.

Income from passive activities does not include income such as compensation for services or portfolio income (including interest, dividends, royalties, annuities, and gains from the sale of property held for investment). For this purpose, property held for investment generally does not include an interest in a passive activity.

A passive activity generally is an activity involving the conduct of a trade or business in which the taxpayer does not materially participate. Present law provides that, except as provided in regulations, no interest in a limited partnership as a limited partner is treated as an interest with respect to which the taxpayer materially participates. Present law also provides Treasury regulatory authority to issue regulations requiring net income or gain from a limited partnership to be treated as not from a passive activity. Thus, except to the extent that the Treasury Department may provide in regulations, income from limited partnerships, including publicly traded limited partnerships, may be offset by passive losses from other sources.

Reasons for Change

It is believed that the return on investment in a publicly traded partnership is essentially comparable to the return on other portfolio investments. Under the passive loss rule, passive losses cannot be applied to offset portfolio income such as interest, dividends, annuities or royalties not derived in the ordinary course of a trade or business. It is believed that income from all publicly traded partnerships should be treated similarly to income from such investments for purposes of the passive loss rule.

Thus, the amendment provides that net income from an interest in any publicly traded partnership is not treated as passive income that can be offset by passive losses. Rather, like dividend income and other portfolio income, income from publicly traded partnership interests is not allowed to be offset by losses (or credits) from passive activities. Losses (and credits) from interests in such partnerships are suspended at the partner level and allowed upon a disposition of the interest in the partnership.

Explanation of Provision

General rules

Under the amendment, net income from publicly traded partnerships is not treated as passive income for purposes of the passive loss rule. Each partner in a publicly traded partnership treats loss (if any) from the partnership as separate from income and loss from any other publicly traded partnership, and also as separate from any income or loss from passive activities. Net income from publicly traded partnerships is treated as portfolio income under the passive loss rule.

Net losses and credits attributable to the interest in the publicly traded partnership are not allowed against the partner's other income, but rather are suspended and carried forward. Such net losses can be applied against net income from the partnership in the next year (or the next succeeding year in which the holder of an interest in the partnership has net income from the partnership). Upon a complete disposition (within the meaning of the passive loss rule) of the partner's entire interest in the publicly traded partnership, any remaining suspended losses are allowed.

In general, income and loss items attributable to an interest in a publicly traded partnership can offset each other. Thus, for example, assume that a holder of an interest in a publicly traded partnership has a net loss from the partnership in one year of $2,000, and net income from the partnership in the next year of $1,500. $1,500 of the loss from the first year may be applied against the $1,500 income in the second year. The remaining $500 loss continues to be suspended at the partner level, and may be carried forward to future years to offset net income from the partnership. Similarly, a partner's share of credits from the partnership may be applied only to offset the partner's income tax liability attributable to the partnership interest. It is intended, however, that a partner be entitled to the $25,000 allowance with respect to credits from the partnership as under present law. The election to adjust basis in the event of a disallowed credit upon a complete disposition is intended to apply, in the case of a complete disposition of an interest in a publicly traded partnership.

In the case of publicly traded partnerships with income that is treated as portfolio income (under the passive loss rule as generally applicable) and losses from business activities, the losses may not be applied against the portfolio income. Thus, under the amendment, partners' shares of the loss may not be applied against their shares of that portfolio income. Thus, partners in publicly traded partnerships cannot offset losses from partnership activities against portfolio income within the partnership that could not be offset against portfolio income derived outside the publicly traded partnership.

In determining which losses from the partnership interest are suspended and carried forward under the provision, the general rules normally applicable in determining which losses are suspended under the passive loss rule are applicable. Generally, the amount of the suspended losses is determined on a pro rata basis.

For purposes of this rule, partners in publicly traded partnerships treat their interests in each such partnership as separately subject to the loss (and credit) limitation and disposition rules of the passive loss rule. Thus, under this rule, no net losses or credits attributable to an interest in a publicly traded partnership are allowed against income other than income from that partnership (except as otherwise provided under the passive loss rule, for example, upon a complete disposition of the partner's interest in the partnership).

The rules applicable to transfers by reason of death and to gifts are also intended to apply, in the case of transfers of interests in publicly traded partnerships. This is consonant with applying the loss and credit limitations and the disposition rules of the passive loss rule separately at the partner level to partners' items from publicly traded partnerships.

The intended overall result is that net losses and credits of a partner from each publicly traded partnership be suspended at the partner level, carried forward (not back) and netted against income, other than the partnership's portfolio income, from (or tax liability attributable to) that publicly traded partnership, and that suspended losses are allowed upon a complete disposition of the partner's interest in the partnership.

Publicly traded partnerships

Publicly traded partnerships are defined for purposes of the provision as partnerships whose interests are (1) traded on an established securities market, or (2) readily tradeable in a secondary market (or the substantial equivalent thereof).

For this purpose, an established securities market includes any national securities exchange registered under the Securities Exchange Act of 1934 or exempted from registration because of the limited volume of transactions, and any local exchange. It also includes any over the counter market. An over the counter market is characterized by an interdealer quotation system which regularly disseminates quotations of obligations by identified brokers or dealers, by electronic means or otherwise.

An interest is treated as readily tradeable on a secondary market (or the substantial equivalent thereof) if the interest is regularly quoted by brokers or dealers making a market in the interest. (See Treas. Reg. section 1.453-3(d)(3).) Thus, for example, an interest is readily tradeable in a secondary market where the interest is traded on a market essentially equivalent to an over the counter market, or where the holder has a readily available, regular and ongoing opportunity to sell or exchange his interest.

A partner's ability to trade the interest, without more, will not cause the interest to be treated as readily tradeable, nor will occasional sales of interests in the partnership, the terms of which are not widely publicized or widely available, indicate the existence of a secondary market.

The existence of a buy-sell agreement among the partners, without more, will not cause a partnership to be treated as publicly traded. Nor will the occasional and irregular repurchase or redemption by the partnership, or acquisition by the general partner, of interests in the partnership, cause the partnership to be considered as publicly traded under the provision. A regular plan of redemptions or repurchases, or similar acquisitions of interests in the partnership such that holders of interests have readily available opportunities to dispose of their interests, that is essentially equivalent to a secondary market, indicates that the interests are readily tradeable on what is the substantial equivalent of a secondary market.

In general, a provision for the discretion of the general partner or the partnership to refuse consent to transfer of an interest in the partnership (or of rights to income or other attributes of an interest in the partnership) does not, without more, prevent a partnership from being considered publicly traded. For example, the discretion of the general partner to refuse consent to a transfer if the transfer would cause a termination of the partnership for Federal income tax purposes does not cause the partnership to be treated as not publicly traded. Similarly, if the general partner must consent to any transfer of an interest in the partnership, but the assignment of rights to income (or other attributes) of the partnership is not so limited, the consent requirement does not cause the partnership to be considered as not publicly traded.

Effective Date

The provision is effective as if included in the amendments made by section 501 of the Tax Reform Act of 1986. Thus, the provision is effective for taxable years beginning after December 31, 1986.

2. Study of Tax Treatment of Publicly Traded Partnerships (sec. 4531(b) of the bill)

Present Law

Present law provides that a partnership is not subject to tax at the partnership level, but rather, income and loss of the partnership is subject to tax at the partner's level. A partner's share of partnership income is generally determined without regard to whether he receives any corresponding cash distributions. Thus, under present law, partnerships generally are treated as conduits for tax purposes.

Reasons for Change

This amendment changes the tax treatment of certain publicly traded partnerships, based on concerns related to preserving the effectiveness of the passive loss rule to curb tax shelters, achieving fair and equitable tax rules, and improving administrability of the tax law. Therefore it is appropriate to monitor and observe the changes made, in order to ascertain whether they have been effective and whether further changes are necessary.

Explanation of Provision

The amendment provides that the Secretary of the Treasury or his delegate shall conduct a study of compliance and administrative issues relating to the tax treatment of publicly traded partnerships and other large partnerships.

Effective Date

The Secretary is required to submit a report on the study, with such recommendations as the Secretary deems appropriate, to the House Committee on Ways and Means and the Senate Committee on Finance no later than January 1, 1989.

E. CHILD AND DEPENDENT CARE CREDIT

Deny Eligibility of Overnight Camp Expenses for Credit

(Sec. 4541 of the bill and sec. 21 of the Code)

Present Law

An income tax credit is provided equal to up to 30 percent of certain employment-related child and dependent care expenses (sec. 21). For example, costs incurred by the taxpayer for a day care center or nursery school, a housekeeper or other home care, and summer camps (including overnight camps) are eligible for the credit if incurred to enable the taxpayer to work.

The amount of qualified expenses eligible for the credit is limited to $2,400 ($4,800 for the care of two or more individuals). The 30 percent credit rate is reduced by one percentage point for each $2,000 (or portion thereof) of adjusted gross income (AGI) between $10,000 and $28,000. The credit rate is 20 percent for taxpayers with AGI exceeding $28,000.

Reasons for Change

It was concluded that a taxpayer's expenses for sending a child or other dependent to an overnight camp are not sufficiently related to the taxpayer's employment to justify providing a tax credit for such costs, as contrasted to the costs of day care. Overnight camp expenses are a personal consumption expenditure that is not a necessary cost of being able to go to work.

Explanation of Provision

Under the provision, costs incurred by a taxpayer to send a child or other dependent to an overnight camp are ineligible for the child and dependent care credit.

Effective Date

The provision is effective for expenses paid in taxable years beginning on or after January 1, 1988.

F. PENSION PROVISIONS

1. Modify Full Funding Limitation (sec. 4551 of the bill and sec. 412 of the Code)

Present Law

Under present law, subject to certain limitations, an employer may make deductible contributions to a qualified defined benefit pension plan up to the full funding limitation (sec. 404). The full funding limitation generally is defined as the excess, if any, of (1) the accrued liability (including normal cost) under the plan, over (2) the lesser of (a) the fair market value of the plan's assets, or (b) the value of the plan's assets determined under section 412(c)(2) (sec. 412(c)(7)). Generally, the accrued liability is based on projected benefits, which, unlike accrued benefits, are the benefits that are projected to be earned by normal retirement age, rather than the benefit accrued as of the close of the current year.

If a defined benefit plan is terminated, the employer's liability to plan participants does not exceed the plan's termination liability (generally the liability for benefits determined as of the date of the plan termination). However, contributions to a plan with assets significantly in excess of termination liability may be deductible because the full funding limitation is determined on the basis of projected benefits.

Reasons for Change

Defined benefit pension plans should be funded in such a manner as to provide benefit security for participants. An employer should not be entitled, however, to make excessive contributions to a defined benefit pension plan to fund liabilities that it has not yet incurred. Such use of a defined benefit plan is equivalent to a tax-free savings account for future liabilities and is inconsistent generally with the treatment of unaccrued liabilities under the Code.

An overall cap on an employer's deductions for plan contributions is appropriate in the case of overfunded plans. A proper balance between the competing concerns described above is achieved by limiting deductible contributions to a defined benefit pension plan to the extent that the contributions cause plan assets to exceed 150 percent of current liabilities, (i.e., generally accrued liabilities).

Explanation of Provision

Under the amendment, the full funding limitation generally is defined to mean the excess, if any, of (1) the lesser of (a) the accrued liability (including normal cost) under the plan, or (b) 150 percent of current liabilities (as defined for purposes of the funding rules in this amendment, except that pre-participation years of service are taken into account in all cases), over (2) the lesser of (a) the fair market value of the plan's assets, or (b) the value of the plan's assets determined under section 412(c)(2).

The amendment does not modify the definition of accrued liability in section 412(c)(7). Also, the requirement of section 412(c)(6)(B) that all amortizable amounts be considered fully amortized is applied without regard to the change in the full funding limitation (adding the 150 percent of current liability limitation).

It is further intended that the full funding limitation (as well as the other limitations on deductions for plan contributions) may not be avoided by the creation of multiple plans with coordination of benefits between the plans. The Secretary is to prescribe rules consistent with this intent.

Effective Date

This provision is effective for years beginning after December 31, 1987.

2. Minimum Funding Standard and Deductions

a. Additional funding requirements (sec. 4552 of the bill)

Present Law

In general

Under present law, certain defined benefit pension plans are required to meet a minimum funding standard for each plan year. The minimum funding standards require that an employer contribute an annual amount sufficient to fund a portion of participants' projected benefits determined in accordance with one of several prescribed funding methods, using actuarial assumptions that are reasonable in the aggregate.

Generally, a funding method calculates the cost of benefits under the plan in 2 components: (1) normal cost, which represents the cost of benefits allocated to the current year under the plan's funding method, and (2) a portion of the plan's accrued liabilities (i.e., all costs other than normal cost). The costs in (2) include costs with respect to past service liability (e.g., the cost of retroactive benefit increases), experience losses, and changes in actuarial assumptions. The amounts in (2) above are amortized over a period of years depending on the nature of the cost. Experience gains and gains from changes in actuarial assumptions are taken into account generally by offsetting a portion of the gains against the amounts determined under (1) and (2) above for the year. Losses increase such amounts.

Each defined benefit pension plan is required to maintain a special bookkeeping account called a "funding standard account". The account is charged with the costs described above and the amount necessary to amortize waived contributions (see below), and credited with the gains described above, the amount of waived contributions for the year, and contributions for the plan year. If, as of the close of a plan year, the account reflects credits equal to or in excess of charges, the plan is treated as meeting the minimum funding standard for the year. Thus, as a general rule, the minimum contribution for a plan year is determined as the amount by which the charges to the account would exceed credits to the account if no contribution were made to the plan.

Currently, some employers maintain "floor-offset" arrangements, which are a combination defined contribution plan and defined benefit plan. Under such an arrangement, a participant's benefits under the defined benefit plan (the floor plan) are offset by the participant's benefits under the defined contribution plan (the offset plan). The IRS has ruled that floor-offset arrangements may meet the qualification requirements of the Code if certain requirements are satisfied.

Past service liabilities

Past service liability existing before the effective date of the minimum funding standards (generally, 1976) is amortized over a period of 40 years. All other past service liability is amortized over a period of 30 years.

Experience gains and losses

Experience losses arise when a plan's experience is less favorable than anticipated under the plan's assumptions (e.g., interest, mortality, morbidity, and employee turnover). Similarly, experience gains arise when a plan's experience is more favorable than anticipated. Experience gains and losses are amortized over 15 years.

Gains and losses from changes in assumptions

If the actuarial assumptions used for funding a plan are revised and, under the new assumptions, the liability of a plan is less than the liability computed under the previous assumptions, the decrease is a gain from changes in actuarial assumptions. If the new assumptions result in an increase in the liability, the plan has a loss from changes in actuarial assumptions. The gain or loss for a year from changes in actuarial assumptions is amortized over a period of 30 plan years.

Switchback liability

Certain plans may elect to use an alternative minimum funding standard account for any year in lieu of determining contributions under the rules described above. Specified annual charges and credits apply with respect to the alternative account. The minimum funding standard is considered satisfied for a year if a contribution meeting the requirements of the alternative account is made, even if a greater contribution would be required under the normal funding rules.

If the plan switches back from the alternative account to the regular method of determining contributions, the excess, if any, of charges over credits at the time of the change ("the switchback liability") must be amortized over a period of 5 plan years.

Contingent benefits

Under present law, benefits contingent on events such as the shutdown of a facility are funded in the same manner as other benefits. Thus, the plan assumptions may include a probability that the shutdown or other contingency will occur. If too low a likelihood of the contingency occurring is assumed, then an experience loss occurs when the event occurs.

Shutdown and similar contingent benefits are guaranteed by the Pension Benefit Guaranty Corporation (PBGC) in accordance with the generally applicable rules regarding such guarantees (e.g., the limit on the dollar amount and type of benefit guaranteed) (see discussion below). To the extent the benefits are guaranteed, the guarantee phases in over time after the plan or plan amendment providing for the benefit is adopted (or the effective date of the plan or amendment, if later).

Valuation of assets

Under present law, the value of plan assets is to be determined in accordance with any reasonable actuarial method of valuation that takes into account fair market value and that is permitted under Treasury regulations. The regulations permit plan assets to be valued on the basis of the average value over a period not exceeding the 5 most recent plan years. Regardless of the valuation method used, the method must result in a value that is between 80 percent and 120 percent of fair market value or between 85 percent and 115 percent of average value as defined in the regulations (Treas. reg. sec. 1.412(c)(2)-1(b)(6)).

Factors contributing to underfunding of defined benefit plans

A plan is considered to be underfunded if, upon termination, it lacks sufficient assets to discharge its liabilities. One reason underfunding may arise is that, despite the minimum funding standard, the plan may terminate before the time necessary for full amortization of its liabilities has expired. This is particularly true with respect to plans that base benefits solely on service, rather than on service and salary, and that provide regular benefit increases with respect to all years of service.

For example, assume that, at the time a plan was adopted, it provided benefits measured (in part) by service performed before the plan was adopted. The liability for those benefits (past service liability) is amortized over a period of 30 years. If the plan terminates before the end of the 30-year period, then the plan will be underfunded unless favorable investment experience, gains due to favorable mortality experience or other experience gains are sufficient to offset the unfunded liability arising from the past service benefit.

Underfunding may also be attributable to unamortized losses arising from investment experience or other experience (e.g., mortality, morbidity, employee turnover) that is less favorable than anticipated. An example of significant experience losses creating underfunding is the substantial increase in plan liabilities that is triggered by a plant closing or similar sudden workforce contraction that has not been fully anticipated in funding the plan. In some cases, a plan is underfunded at termination because the employer obtained a waiver of the funding standard and the plan was terminated before the waived funding deficiency was fully amortized.

Reasons for Change

As of September 30, 1985, the PBGC reported a deficit of approximately $1.3 billion. As of September 30, 1986, the PBGC's deficit nearly tripled over the prior year, reaching $3.8 billion (approximately $2 billion of which is attributable to the termination of plans maintained by LTV Corporation). The substantial increase in the deficit of the PBGC is generally attributed to the termination of certain steel industry pension plans with insufficient assets to provide guaranteed benefits.

The PBGC's deficit has not affected its immediate ability to pay pension benefits to retired participants in terminated plans. However, PBGC officials estimate that projected increases in the PBGC's deficit could result in insufficient assets to pay annual costs in approximately 15 years.

The General Accounting Office issued a report on March 19, 1987 (the "GAO Report") [6] stating that, during the years 1983-85, 70 percent of the claims against the PBGC for termination of underfunded plans resulted because the present-law funding standards do not require sufficient contributions to fund increased unfunded liabilities arising in part from numerous benefit increases within 5 years of plan termination.

It is believed that the present-law funding requirements expose plan participants and the PBGC to excessive risk. Under present law, the funded status of a plan may deteriorate even if the minimum funding requirements are fully satisfied. Thus, it is concluded that the present-law rules, which provide long-term financing of increases in unfunded liabilities under a pension plan, create an incentive for employers to provide benefit increases that might otherwise not be affordable.

Accordingly, more rapid funding requirements would more appropriately limit the ability of employers to delay or avoid funding obligations. An employer should not have the opportunity to make pension promises that exceed its financial capacity to meet its promises. In order to reduce the financial risk to plan participants and the PBGC, the amendment requires certain plans to be funded more rapidly depending on the funded status of the plan.

It is believed that certain types of contingent benefits create special funding problems. Benefits contingent on relatively unpredictable events, such as a plant shutdown, typically are not adequately funded before the event occurs. Thus, upon the occurrence of the contingency, a tremendous increase in plan underfunding may occur, and the employer often is not financially able to fund such benefits at that time. In some cases, the liability for the benefits may be shifted to the PBGC. It is believed that it is appropriate to provide special funding rules with respect to certain contingent benefits.

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[6] U.S. General Accounting Office, *Pension Plans: Government Insurance Program Threatened By Its Growing Deficit* (GAO/HRD-87-42).

Explanation of Provisions

In general

The amendment retains the present-law funding standards under section 412 of the Code, with certain modifications. In addition, with respect to an underfunded plan, the minimum required contribution is, in general terms, the greater of (1) the amount determined under section 412 (with the modifications made by the amendment), or (2) the sum of (i) normal cost, (ii) the amount necessary to amortize experience gains and losses and gains and losses resulting from changes in actuarial assumptions over 5 years, and (iii) the deficit reduction contribution. In addition, a special funding rule applies with respect to benefits that are contingent on unpredictable events.

More specifically, the amendment provides that, for an underfunded plan, the amount otherwise required to be charged to the funding standard account for a plan year otherwise is increased by (1) the excess of (i) the deficit reduction contribution over (ii) certain charges to the funding standard account reduced by certain credits to such account, plus (2) the unpredictable contingent event amount (if any) for the plan year. The charges taken into account under the preceding sentence include (i) the amount necessary to amortize past service liability, (ii) the amount necessary to amortize each waived funding deficiency, and (iii) the amount necessary to amortize certain amounts credited in the case of an employer previously using the alternative minimum funding standard account (the switchback liability). The credits taken into account include the amounts necessary to amortize decreases in past service liability.

As under present law, contributions in excess of the minimum required contribution will create funding credit balances that may be used to offset the required minimum contribution. In addition, credit balances in existence on the effective date may be used to offset required minimum contributions. The amendment does not affect the ability of an employer to maintain a floor-offset arrangement.

Deficit reduction contribution

Under the amendment, the deficit reduction contribution is the sum of (1) the unfunded old liability amount, and (2) the unfunded new liability amount. Calculation of these amounts is based upon the plan's "current liability".

Current liability

Under the amendment, the term "current liability" means all liabilities to employees and their beneficiaries under the plan (as determined under sec. 401(a)(2)). However, the value of any "unpredictable contingent event benefit" is not taken into account in determining current liability until the event on which the benefit is contingent occurs. An "unpredictable contingent event benefit" is any benefit contingent on an event other than (1) age, service, compensation, death, or disability, or (2) an event which is reasonably and reliably predictable as determined by the Secretary.

It is not intended that an event will be considered reliably and reasonably predictable solely because an actuarial probability of the event occurring may be determined. It is further intended that the Secretary of the Treasury will prescribe rules defining events that can and cannot be reasonably and reliably predicted and will revise these rules as new benefits are developed.

Unpredictable contingent event benefits are intended to include benefits that depend on contingencies that, like facility shutdowns or reductions or contractions in workforce, are not reliably and reasonably predictable. Such contingencies are not limited to events that are similar to shutdowns or reductions in force. For example, a benefit dependent on the profits of the employer or the value of employer stock dropping below a certain level would be considered a benefit contingent on an event that is not reasonably and reliably predictable (unless the contingency is illusory).

If an employer provides an early retirement window benefit under which employees who have satisfied certain age or service requirements or both are offered a limited period of time during which they may elect to retire, such a window benefit is generally considered to be contingent on an event that can be reasonably and reliably predicted. The Secretary of the Treasury may, in appropriate circumstances, treat such window benefits as benefits which are contingent on an event that cannot be reasonably and reliably predicted.

It is intended that a benefit contingent on marital status, such as a qualified joint and survivor annuity, is generally to be considered a benefit that is contingent on an event that can be reasonably and reliably predicted.

It is intended that the Secretary of the Treasury may prescribe rules to prevent employers from avoiding the new minimum funding rules by characterizing contingencies as not reasonably and reliably predictable. For purposes of the definition of current liability, a benefit is generally not to be considered contingent on an event which is not reasonably and reliably predictable if there is substantial certainty that the event on which the benefit depends will occur.

An early retirement subsidy, social security supplement, survivor subsidy or similar benefit in addition to the basic retirement benefit under a plan that is payable only on the satisfaction of certain eligibility conditions, (e.g., age and/or years of service eligibility conditions) is included in current liability to the extent that the employee has earned the subsidy, supplement, or similar benefit.

For example, assume that a plan provides that an employee is entitled to a basic retirement benefit commencing at age 65 of 1 percent of final average pay times years of service and that, if the employee retires at age 55 with at least 25 years of service, the employee's retirement benefit will not be actuarially reduced for early commencement (i.e., this is an early retirement subsidy). For purposes of calculating the current liability for such plan for a year, an employee age 50 with 20 years of service has a total retirement benefit (i.e., normal retirement benefit plus early retirement subsidy) of 80 percent of the unreduced age 55 benefit (based on final average pay at age 50). That is, there is no actuarial reduction for commencement before age 65. The same analysis applies in determining the extent to which a social security supplement, survivor subsidy, or similar benefit has been earned under the plan.

Current liability is generally determined in accordance with plan assumptions. Thus, in the example described above, because not all employees who have earned a right to some portion of the early retirement benefit will ultimately satisfy the eligibility conditions for the subsidy (e.g., not all such employees will remain with the employer until age 55), a plan is to calculate its current liability for the year by using reasonable turnover and mortality factors.

The amendment provides a special limitation on the interest rate used for purposes of calculating current liability. Under the amendment, the interest rate is the rate used for calculating costs under the plan. If such rate is not within the permissible range, then the plan is required to establish a new interest rate that is within the permissible range. The permissible range is defined as a rate of interest that is not more than 20 percent above or below the average mid-term applicable Federal rate (AFR) for the 3-year period ending on the last day before the beginning of the plan year for which the interest rate is being used (or, if shorter, the period that the AFR has been computed). The average is determined by averaging the rate in effect for each month during the applicable 3-year period. The Secretary may prescribe one or more indices in lieu of the average mid-term AFR to be used in determining the permissible range.

The amendment provides that certain service may be disregarded at the employer's election in calculating the plan's current liability. In the case of certain participants, the applicable percentage of the years of service before the individual became a participant are taken into account in determining current liability. The applicable percentage is (1) 0, if the individual has 5 or less years of participation, (2) 20, if the individual has 6 years of participation, (3) 40, if the individual has 7 years of participation, (4) 60, if the individual has 8 years of participation, (5) 80, if the individual has 9 years of participation, and (6) 100 if the individual has 10 or more year of participation. Partial years of participation are rounded to the nearest whole year.

The rule disregarding pre-participation service is available with respect to any participant who, at the time of becoming a participant, has not accrued any other benefits under any defined benefit pension plan (whether or not terminated) of the employer or the employer's controlled group, and has years of service before such time in excess of the years of service required for eligibility to participate in the plan. The rule applies only with respect to new participants in years beginning after December 31, 1987.

The amendment provides that unfunded current liability means, with respect to any plan year, the excess of (1) the current liability under the plan over (2) the value of the plan's assets reduced by any credit balance in the funding standard account. The funded current liability percentage of a plan for a plan year is the percentage that (1) the value of the plan's assets reduced by any credit balance in the funding standard account is of (2) the current liability under the plan.

Unfunded old liability amount

The unfunded old liability amount is, in general, the amount necessary to amortize the unfunded old liability under the plan in equal annual installments (until fully amortized) over a fixed period of 18 plan years (beginning with the first plan year beginning after December 31, 1988). The "unfunded old liability" with respect to a plan is the unfunded current liability of the plan as of the beginning of the first plan year beginning after December 31, 1987, determined without regard to any plan amendment adopted after October 16, 1987, that increases plan liabilities (other than amendments adopted pursuant to collective bargaining agreements described in the following paragraph).

Under a special rule applicable to collectively bargained plans, increases in liabilities pursuant to a collective bargaining agreement ratified before October 17, 1987, are also amortized over 18 years. Thus, under the amendment, the unfunded old liability amount with respect to a collectively bargained plan is increased by the amount necessary to amortize the unfunded existing benefit increase liabilities in equal annual installments over a fixed period of 18 plan years, beginning with the plan year in which the increase in liabilities occurs pursuant to the bargaining agreement (or, if later, the first plan year beginning after December 31, 1988). For purposes of this rule, the unfunded existing benefit increase liability means the unfunded current liability determined by taking into account only (1) liabilities attributable to the increase in liabilities pursuant to the agreement, and (2) the value of assets in excess of current liability (determined without regard to the liabilities described in (1)).

The employer may elect to amortize unfunded existing benefit increase liability under an alternative rule instead of the rule described above. Under the alternative rule, the increases in liabilities under the collective bargaining agreement would be calculated as of the beginning of the first plan year beginning after December 31, 1987. This amount would be included in calculating the initial unfunded old liability and, together with any other unfunded old liability, would be amortized over 18 years beginning with the first plan year beginning after December 31, 1988.

For purposes of determining the unfunded existing benefit increase liability, any extension, amendment, or other modification of a bargaining agreement after October 16, 1987, is not taken into account. In general, the unfunded existing benefit increase liability only includes increases in liability pursuant to the bargaining agreement and therefore does not include liability increases with respect to individuals covered by the plan who are not subject to the collective bargaining agreement. However, if more than 75 percent of the employees covered by the plan on October 16, 1987, are subject to the collective bargaining agreement, then the unfunded existing benefit increase liability includes the liability with respect to all employees in the plan whose benefits are determined directly or indirectly by reference to the terms of the bargaining agreement, whether or not such employees are subject to the agreement. Separate plans may not be treated as a single plan for purposes of this rule, even if the benefits under the plans are coordinated.

For example, assume a benefit increase under a collective bargaining agreement ratified before October 17, 1987, takes effect on January 1, 1990, and that the liability due to the benefit increase is $10x. The current liability of the plan determined without regard to the benefit increase is $100x, and the value of plan assets is $105x. The plan year is the calendar year. The unfunded existing benefit increase liability is $5x. This amount will be amortized over 15 years, beginning in 1990.

Alternatively, instead of amortizing the benefit increase as described above, the employer could elect to add the liability due to the increase (calculated as of January 1, 1988) to the unfunded old liability (determined without regard to the benefit increase) and amortize the entire amount over 15 years beginning in 1989.

Unfunded new liability amount

The unfunded new liability amount for a plan year is the applicable percentage of the plan's "unfunded new liability." "Unfunded new liability" means the unfunded current liability of the plan for the plan year, determined without regard to (1) the unamortized portion of the unfunded old liability and (2) the liability with respect to any unpredictable contingent event benefits, without regard to whether or not the event has occurred. Thus, in calculating the unfunded new liability, all unpredictable contingent event benefits are disregarded, even if the event on which that benefit is contingent has occurred.

If the funded current liability percentage is less than 35 percent, then the applicable percentage is 30 percent. The applicable percentage decreases by .25 of one percentage point for each 1 percentage point by which the plan's funded current liability percentage exceeds 35 percent. For example, if the funded current liability percentage is 55 percent, then the applicable percentage is 25 percent, and the unfunded new liability amount for the plan year is 25 percent of the unfunded new liability. Similarly, if the funded current liability percentage is 80, then the applicable percentage is 18.75 and the unfunded new liability amount for the plan year is 18.75 percent of the unfunded new liability.

Unpredictable contingent event benefits

If the event on which an unpredictable contingent event benefit is contingent occurs during the plan year and the assets of the plan are less than current liability (calculated after the event has occurred), then an additional funding contribution (over and above the minimum funding contribution otherwise due) is required. The amount of the required additional contribution is generally equal to the greater of (1) the amount of unpredictable contingent event benefits paid during the plan year (regardless of the form in which paid), including (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract with respect to a participant with respect to such benefits, and (2) the amount that would be determined for the year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 5 years, beginning with the plan year in which the event occurs. For the year in which the event occurs, an amount equal to 150 percent of the amount determined under (1) above may, at the employer's election, be treated as the unpredictable contingent benefit amount. In no case, however, will the unpredictable contingent event amount exceed the unfunded current liability (including the liability due to the contingent event benefit) of the plan.

If the event on which an unpredictable contingent event benefit is contingent occurs during the plan year and the assets of the plan equal or exceed current liability (calculated after the event has occurred), then the employer may continue to fund the plan's unpredictable contingent event benefits as under present law (i.e., generally as an experience loss), subject to the application of the special rule if the plan's funding falls below current liability

Adjustments

The Secretary of the Treasury is to prescribe appropriate adjustments in the unpredictable contingent event amount, the old liability amount, the new liability amount, and the other charges and credits under section 412 as are necessary to avoid inappropriate duplication or omission of any factors in the determination of such amounts, charges and credits (for example, adjustments reflecting asset appreciation or depreciation).

It is also intended that the Secretary will provide special rules for multiple-employer plans where appropriate.

Small plan exception

The new funding rules for plans with assets less than current liability do not apply to a plan with no more than 100 participants on any day in the preceding plan year. In the case of a plan with more than 100 but no more than 150 participants during the preceding year, the amount of the additional contribution is determined by multiplying the otherwise required additional contribution by 2 percent for each participant in excess of 100. For purposes of this rule, all defined benefit plans (including multiemployer plans) of the employer and the employer's controlled group are treated as a single plan. Controlled group is defined as in section 414(b), (c), (m) and (o). With respect to a multiemployer plan, only employees of the employer (or a controlled group member) are taken into account.

Valuation regulations

The amendment provides that, effective with respect to plan years beginning after December 31, 1987, the portions of the regulations permitting asset valuations to be based on a range between 85 percent and 115 percent of average value are to have no force and effect. In addition, the amendment provides that the Secretary of the Treasury is to amend the regulations to carry out the intent of this provision.

Effective Dates

In general, the changes in the minimum funding requirements for defined benefit pension plans apply with respect to plan years beginning after December 31, 1988.

Contingent event benefits with respect to which the event has occurred before October 17, 1987, are not subject to the new funding rule for such benefits. If the event has not occurred on or before October 16, 1987, such benefits are subject to the new funding rules for such benefits. If the event occurs after October 16, 1987, and before the first day of the first plan year beginning after December 31, 1988, funding under the new rule begins in such first plan year. Of course, for the first plan year beginning after December 31, 1987, contingent event benefits are subject to the new rules regarding gains and losses.

With respect to provisions that cross reference the definition of "current liability," the definition is effective at the time the provision cross referencing it is effective.

b. Time for making contributions (sec. 4553 of the bill)

Present Law

Under present law, an employer is treated as making a contribution that satisfies its minimum funding requirement for a plan year if the contribution is made within 8-1/2 months after the close of the plan year. Of that 8-1/2-month grace period for making plan contributions, 6 months were provided under Treasury regulations.

Reasons for Change

In light of the GAO report, it is believed that it is not appropriate to permit employers to make no contributions until 8-1/2 months following the end of the plan year. The GAO report found that a significant amount of claims against the PBGC occurred when plan contributions for a year were not made because the payment deadline expired after the date of plan termination.

Further, it is believed that requiring quarterly plan contributions could provide an early warning to the PBGC, the IRS, and to plan participants of possible employer difficulty in meeting its funding obligations. Such an approach is consistent with other tax laws, such as those requiring withholding taxes and estimated tax payments to be made on a quarterly basis. Because the amendment requires that a significant portion of the year's contribution be made in installments during the plan year, it is believed that that it is not necessary to accelerate the 8-1/2 month period for making the final plan contribution.

In addition, there is concern that, under present law, employees do not receive adequate information relating to the funded status of a plan maintained by the employer. As a result, employees may make retirement planning decisions without knowledge of the risk that they will not receive their promised benefits under the employer-maintained plan. Accordingly, it is believed that employees should be aware of whether or not the employer is making required contributions to the plan so that each employee may assess the risk that the employer's plan will not have sufficient assets to pay benefits when due.

In order to ensure that contributions are actually paid to the plan, it is also believed that it is appropriate to provide for a lien in favor of the plan if contributions are missed.

Explanation of Provisions

Quarterly payments of estimated required contribution

Under the amendment, 4 installment payments of minimum funding contributions are required for each plan year. The due dates of these 4 required installments are, in the case of a calendar year plan year, April 15, July 15, October 15, and January 15 of the following year. The amount of each required installment is 25 percent of the required annual payment.

The amendment defines the required annual payment to be the lesser of (1) 90 percent of the amount the employer is required to contribute for the plan year under the minimum funding requirements (other than the unpredictable contingent event amount) or (2) 100 percent of the amount the employer was required to contribute for the preceding plan year (other than the unpredictable contingent event amount) with respect to the plan and any predecessor plans. The second rule does not apply if the preceding plan year was less than 12 months. The unpredictable contingent event amount is required to be contributed in addition to the installment contributions otherwise due. Thus, for example, if the unpredictable contingent event amount for a quarter is equal to the amount of payments of unpredictable contingent event benefits, such amount is required to be contributed at the same time and in addition to the otherwise required next quarterly installment.

In the case of a plan year that is not a calendar year, the due dates of the required installments are (1) the 15th day of the 4th month, (2) the 15th day of the 7th month, and (3) the 15th day of the 10th month following the beginning of the plan year, and (4) the 15th day of the 1st month following the beginning of the following plan year. Under the amendment, the due dates of required installments in the case of a short plan year are to be determined under Treasury regulations.

If a required installment is not paid to the plan by the due date for the installment the funding standard account is charged with interest on the amount of the underpayment for the period of the underpayment. The amount of the underpayment is determined by subtracting the installment payments made on or before the due date of the installment from the required installment.

The period of the underpayment is the period from the due date of the installment to the earlier of (1) the contribution due date for the plan year (i.e., 8-1/2 months following the end of the plan year), or (2) with respect to any portion of an underpayment, the date on which the portion is contributed to the plan. Contributions are credited first to the underpayments arising first.

The rate of interest is the greater of 175 percent of the Federal mid-term rate (AFR) or the rate of interest used under the plan in determining costs.

Notice of failure to meet minimum funding standards

The amendment requires that the employer is to notify participants and beneficiaries if the employer fails to make a required installment or fails to make the final contribution (i.e., the contribution required by 8-1/2 months following the end of the plan year). It is expected that the Secretary will prescribe special notice rules in the case of multiple employer plans targetting the notice to participants and beneficiaries with respect to the employer failing to make the required contribution.

Imposition of lien

If the employer fails to make a required contribution (including a required installment payment) when due, a lien arises in favor of the plan in the amount of the missed contribution (including interest). The lien is on all property and rights to property, whether real or personal, belonging to the contributing sponsor and members of the controlled group of the contributing sponsor. The lien generally arises 30 days after the due date of the contribution, and continues until the payment of such contribution (including interest). However, if a timely request for a funding waiver is made with respect to the contribution, then the lien does not arise until the day after the waiver is denied. No lien arises if the waiver is granted. The employer is required to notify the PBGC of any failure to make a required contribution within 10 days after the due date of the contribution.

If the employer fails to make successive contributions, the lien previously in existence under this provision does not terminate. Rather, the provision operates with respect to each successive missed contribution.

The lien may be perfected and enforced only by the PBGC or, at the direction of the PBGC, by the contributing sponsor or any member of the controlled group of the contributing sponsor. Rules similar to the rules in section 4068(c), (d), and (e) of ERISA apply with respect to the lien and the amount on which the lien is based. A perfected lien is treated as a Federal tax lien, and an unperfected lien is treated as a Federal tax claim.

Effective Dates

The provisions are effective for plan years beginning after December 31, 1987. Under a transition rule, the amount of each required installment payment (other than payments of the unpredictable contingent event amount) is (1) 5 percent for plan years beginning in 1988, (2) 10 percent for plan years beginning in 1989, (3) 15 percent for plan years beginning in 1990, and (4) 20 percent for plan years beginning in 1991.

c. Liability of members of controlled group for taxes on failure to meet minimum funding standards (sec. 4554 of the bill)

Present Law

If, as of the close of any plan year, the minimum required contribution has not been made and charges to the funding standard account exceed credits to the account, then the excess is referred to as an "accumulated funding deficiency." Unless a minimum funding waiver is obtained, an employer who is responsible for contributing to a plan with an accumulated funding deficiency is subject to a 5-percent nondeductible excise tax on the amount of the deficiency (Code sec. 4971). If the deficiency is not corrected within the "taxable period," then an employer who is responsible for contributing to the plan is also subject to a nondeductible excise tax equal to 100 percent of the deficiency. The taxable period is the period beginning with the end of the plan year in which there is a deficiency and ending on the earlier of (1) the date of a mailing of a notice of deficiency with respect to the 5-percent tax or (2) the date on which the 5-percent tax is assessed by the Internal Revenue Service (IRS).

The excise taxes imposed for a failure to meet the funding requirements applicable to a plan are imposed only on an employer who is responsible for contributing to the particular plan in which the deficiency arises. Another taxpayer that is a member of the same controlled group of corporations or trades or businesses as the employer is not liable for a funding deficiency unless the other taxpayer is also responsible for contributing to that plan. Under proposed regulations, the entire controlled group would be liable for any excise taxes imposed for a failure by a member of the group to satisfy the minimum funding requirements.

Reasons for Change

It is believed that the present-law rules relating to the liability to make contributions to a pension plan enable an employer that is a member of a controlled group to avoid its liabilities when it is unable to make a required contribution even though other members of the employer's controlled group have sufficient assets to make the employer's required contribution. The failure to impose liability for the contributions on a controlled group basis increases the potential risk to plan participants and the PBGC.

In addition, in light of the GAO report, it is believed that increases in the taxes for failure to make contributions are needed to help ensure that contributions are made when due.

Explanation of Provision

Under the amendment, as under present law, the employer who maintains a pension plan is liable for any excise taxes imposed for a failure to meet the minimum funding standards (Code sec. 4971). In addition, if the employer is a member of a controlled group, each member of the employer's controlled group is jointly and severally liable for such excise taxes.

Under the amendment, a controlled group is any group of employers treated as a single employer under section 414(b), (c), (m), or (o).

The amendment also increases the amount of the first-tier excise tax from 5 percent to 10 percent.

Effective Date

The provision is effective for taxes imposed with respect to plan years beginning after December 31, 1987.

d. Funding waivers (sec. 4555 of the bill)

Present Law

Within limits, the IRS is permitted under present law to waive all or a portion of the contributions required under the minimum funding standard for a plan year. Generally, the IRS has required that a request for a waiver be submitted by the end of the plan year following the plan year for which the waiver is requested. A waiver may be granted if the employer (or employers) responsible for the contribution could not make the required contribution without substantial business hardship and failure to grant the waiver would be adverse to the interests of plan participants in the aggregate. The IRS generally takes the position that a waiver will not be granted unless the hardship is temporary and the employer demonstrates that recovery is likely. Under present law, an employer is required to notify each employee organization representing employees covered by the plan of an application for a funding waiver. No more than 5 waivers may be granted within any period of 15 consecutive plan years.

A waived contribution is a waived funding deficiency. Under the funding standard, the amount of a waived funding deficiency is amortized over a period of 15 plan years, beginning with the year following the year for which the waiver is granted. Each year, the funding standard account is charged with the amount amortized for that year unless the plan becomes fully funded. Interest on the waived amount is equal to the rate applicable to late payment of taxes (Code sec. 6621(b)). The IRS generally allows deductions for contributions made to amortize waived deficiencies more quickly than over 15 years. (See, e.g., Rev. Rul. 78-223, 1978-1 C.B. 125.)

Reasons for Change

It is believed that employers have used funding waivers in the past to minimize plan contributions during the period immediately preceding the termination of a plan. The GAO report found that 30 percent of the claims against the PBGC arising during the period 1983-1985 resulted from the failure of employers to make required plan contributions prior to plan termination. The GAO concluded that significant percentages of the large claims represented required contributions that were overdue or had been waived by the IRS.

Under present law, funding waivers are equivalent to an extension of credit from a plan to the employer that normally would be treated as a prohibited transaction. It is believed that such an extension of credit is not appropriate unless adequate safeguards apply to protect participants' benefits. Plan participants should not be required to finance the continuing operations of an employer by placing their retirement benefits at risk.

Further, it is believed that the integrity of the plan termination insurance program will be jeopardized if employers have the opportunity to avoid liability for their pension promises at the expense of other employers who moderated their promises or are more financially secure and remain in the defined benefit system.

Explanation of Provision

The amendment modifies the rules governing the availability of minimum funding waivers in several respects. Under the amendment, a waiver application is required to be filed no later than the due date for the contribution (including required installments). Thus, a waiver for a quarterly installment must be made by the due date for the installment.

The standards for obtaining a waiver are clarified by incorporating in the statute the present-law requirement that the employer seeking a waiver is required to establish that the financial hardship is temporary. The IRS is directed to apply the temporary hardship standard to prevent the granting of funding waivers to employers that will not recover sufficiently to make their waived contributions. Because all members of the controlled group of the employer maintaining the plan are liable for excise taxes under the minimum funding rules, the hardship determination is based, under the amendment, upon the circumstances of the entire controlled group, as well as the circumstances of the particular employer.

In order to make funding waivers more equivalent to commercial loans, the amendment provides that the interest rate on waived contributions for purposes of determining the amortization charge for waived amounts is increased from the interest rate applicable to the late payment of taxes to the greater of the plan's interest rate for funding purposes or 150 percent of the Federal mid-term rate (as in effect under sec. 1274 for the first month of the plan year). The interest rate based on the Federal mid-term rate is intended to be an administrable measure of a market interest rate for borrowing by a distressed company.

To protect plans against protracted periods of serious underfunding and serious deterioration of the funded status of the plan, the amendment provides that a funding waiver may not be granted with respect to a plan that has assets less than current liability. The determination of whether a plan has assets less than current liability is to be made at the beginning of the plan year or at such other time as determined by the Secretary.

In addition, the amendment reduces the number of waivers that may be granted with respect to any plan within a 15-year period from 5 to 3. A single waiver request may be made with respect to all quarterly contributions for a year and the final required contribution.

It is not intended that the amendment will affect the administrative practice of the IRS under which deductions are allowed for contributions that amortize waived funding deficiencies more rapidly than the required amortization.

Effective Dates

The provision relating to funding waivers is effective with respect to any application for a funding waiver submitted with respect to plan years beginning after December 31, 1987. With respect to the rule restricting the number of waivers in a 15-year period, waivers granted prior to the effective date are taken into account.

e. Amortization periods (sec. 4556(a) of the bill)

Present Law

In determining plan funding under an actuarial cost method, a plan's actuary generally makes certain assumptions regarding the future experience of a plan. These assumptions typically involve rates of interest, mortality, disability, salary increases, and other factors affecting the value of assets and liabilities. The actuarial assumptions are required to be reasonable in the aggregate. If, on the basis of these assumptions, the contributions made to the plan result in actual unfunded liabilities that are less than anticipated by the actuary, then the excess is an experience gain. If the actual unfunded liabilities are greater than those anticipated, then the difference is an experience loss. For a single-employer plan, experience gains and losses for a year are amortized over a 15-year period.

If the actuarial assumptions used for funding a plan are revised and, under the new assumptions, the liability of a plan is less than the liability computed under the previous assumptions, the decrease is a gain from changes in actuarial assumptions. If the new assumptions result in an increase in the liability, the plan has a loss from changes in actuarial assumptions. The gain or loss for a year from changes in actuarial assumptions is amortized over a period of 30 plan years.

Reasons for Change

It is believed that the present-law amortization period for experience gains and losses delays unnecessarily the reconciliation of actual experience and actuarial assumptions. The present-law amortization period for experience losses contributes to underfunding and thereby undermines benefit security and increases the risk of loss to the PBGC. The present-law amortization period for experience gains similarly contributes to inappropriate overfunding because such gains are taken into account over a long period.

Similarly, it is believed that the present-law amortization period for gains and losses resulting from changes in actuarial assumptions delays unnecessarily the reconciliation of the old assumptions with the new assumptions. In addition, the lengthy amortization period provided under current law may contribute to undue manipulation of plan assumptions.

Explanation of Provision

Under the amendment, the period for amortizing experience gains and losses is reduced to 5 years from 15 years. The period for amortizing gains and losses from changes in assumptions is reduced to 5 years from 30 years.

Effective Date

The provision is effective for gains and losses arising in plan years beginning after December 31, 1987. The amendment does not affect the amortization period applicable to gains and losses arising in plan years beginning before January 1, 1988.

f. Actuarial assumptions must be reasonable (sec. 4556(b) of the bill)

Present Law

Under present law, the actuarial assumptions used to determine costs, liabilities, interest rates, and other factors under a plan are required to be reasonable in the aggregate. Present law does not require any individual actuarial assumption to be reasonable.

Reasons for Change

The present-law rule for actuarial assumptions presents significant compliance problems for the IRS. It is substantially more difficult for the IRS to establish that a plan's funding is determined on the basis of actuarial assumptions that are, in the aggregate, unreasonable than to challenge any individual assumption.

It is believed that these administrative problems reduce the ability of the IRS to require an employer to make plan contributions necessary to meet the plan's benefit obligations.

In addition, some employers who wish to maximize their tax deferral or obtain a larger tax deduction in a particular year use unrealistic actuarial assumptions (such as an extremely low interest rate assumption) in order to generate larger plan contributions and deductions. The inability of the IRS to challenge individual actuarial assumptions makes it more likely that employers who want to manipulate the present-law rules may do so.

Explanation of Provision

The amendment modifies the standard for actuarial assumptions to require that all costs, liabilities, interest rates, and other factors are to be determined on the basis of actuarial assumptions and methods (1) each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or (2) which result, in the aggregate, in a total plan contribution equivalent to the contribution that would be obtained if each assumption were reasonable. Under the amendment, as under present law, the costs, etc., are required to represent the plan actuary's best estimate of anticipated experience under the plan. It is intended that the taxpayer has the burden of demonstrating that each actuarial assumption is reasonable and, if each actuarial assumption is not reasonable, that the assumptions in the aggregate result in a total contribution equivalent to the contribution that would be obtained if each assumption were reasonable.

Effective Date

The provisions are effective for plan years beginning after December 31, 1987.

g. Limitation on deduction for contributions to certain plans not less than unfunded current liability (sec. 4556(c) of the bill)

Present Law

Under present law, an employer may deduct contributions to a pension plan, within limits. In the case of a defined benefit pension plan, an employer's contributions to a plan may not be deductible even though the sum of the contributions plus the plan assets do not exceed the plan's current liability for the plan year.

Reasons for Change

Under the amendment, underfunded plans are subject to an exposure-related PBGC premium based on the amount of underfunding as a function of current liability. It is believed that it would be unfair to impose the exposure-related premium if the employer is willing to fund the plan up to the level of current liability.

Explanation of Provision

The amendment provides that the maximum deduction limit for contributions to certain defined benefit pension plans for a plan year is not to be less than the unfunded current liability for the plan. Current liability is determined as under the minimum funding rules. Thus, if the employer elects to take pre-participation service into account in calculating current liability under the minimum funding rules, such service is also taken into account in calculating current liability for purposes of this deduction rule. Except as provided by the Secretary, contributions to a defined benefit pension plan are deductible under this rule if the plan has 100 or more participants during the plan year. For purposes of the 100-participant rule, all defined benefit plans (including multiemployer plans) maintained by the same employer or any member of such employer's controlled group are to be treated as a single plan. With respect to multiemployer plans, only employees of the employer (or controlled group member) are taken into account.

Effective Date

The provision is effective for years beginning after December 31, 1987.

3. Treatment of Plan Terminations (secs. 4557-4559 of the bill)

Present Law

Law before 1986

Prior to 1986, an employer could, subject to contractual obligations, terminate a single-employer defined benefit pension plan at any time without regard to the financial health of the employer and without regard to the level of assets in the plan. If a terminated single-employer plan had assets that were sufficient to pay benefits at the level guaranteed by the PBGC, the plan was required to pay those benefits to participants and beneficiaries, and the employer had no liability to the PBGC. If a single-employer plan was terminated with assets insufficient to pay benefits at the level guaranteed by the PBGC, the PBGC would pay unfunded guaranteed benefits. The employer was then liable to the PBGC for the insufficiency or for an amount equal to 30 percent of the employer's net worth, if less. The employer had no further liability to plan participants and beneficiaries.

SEPPAA

The Single Employer Pension Plan Amendments Act (SEPPAA), enacted in 1986, substantially modified the rules relating to the termination of single-employer defined benefit pension plans. Under SEPPAA, the conditions under which an employer may voluntarily terminate a plan were revised and an employer's liability to plan participants and the PBGC was increased in the case of a termination of an underfunded plan.

Guaranteed benefits

Subject to limits, the PBGC guarantees basic benefits under a plan. Basic benefits consist of nonforfeitable retirement benefits other than those benefits that become nonforfeitable solely on account of the termination of the plan. ERISA set the maximum guaranteeable benefit at $750 per month in 1974, to be adjusted annually based on the Social Security wage and benefit base. The maximum monthly amount for 1987 is $1,857.95.

Guarantees do not apply with respect to benefits in effect for fewer than 60 months at the time of plan termination unless the PBGC finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of securing increased guaranteed benefits for participants. In cases in which they apply, guarantees are phased in at the rate of $20 per month or 20 percent per year, whichever is greater, for (1) basic benefits that have been in effect for less than 60 months at the time that the plan terminates, or (2) any increase in the amount of basic benefits under a plan resulting from a plan amendment within 60 months before the date of plan termination.

Standard terminations

After SEPPAA, a single-employer defined benefit pension plan may be voluntarily terminated only in a standard termination or in a distress termination. A plan may be terminated in a standard termination only if it has sufficient assets to pay all benefit commitments under the plan. Benefit commitments are greater than guaranteed benefits, and include all benefits guaranteed by the PBGC and all benefits that would be guaranteed but for the dollar limit on the guarantee or the length of time the benefit has been in existence (the phase-in rule). In addition, benefit commitments include early retirement supplements or subsidies and plant closing benefits with respect to participants who have satisfied all conditions for entitlement prior to termination, without regard to whether such benefits are guaranteed.

Benefit commitments are less than plan termination liability. Termination liability represents all benefits that have been promised under the plan up to the date of plan termination, and consists of all fixed and contingent liabilities to plan participants and beneficiaries. Benefit commitments can be significantly less than termination liability. For example, benefit commitments do not include benefits that vest solely due to plan termination or contingent benefits (such as early retirement benefits) for which the participant has not satisfied all conditions for entitlement prior to termination; these benefits are, however, included in termination liability.

If a plan is terminated in a standard termination so that the plan assets are sufficient to satisfy benefit commitments, then the employer has no further liability to plan participants, even if the plan is not sufficiently funded to meet termination liabilities.

Distress terminations

A plan with assets insufficient to provide benefit commitments may be terminated in a distress termination only if the PBGC determines that each contributing sponsor and each substantial member of the contributing sponsors' controlled group satisfies at least 1 of 4 distress standards established by SEPPAA. An entity is a contributing sponsor if it (1) is responsible for funding the plan or (2) is a member of the controlled group of an entity that is responsible for funding, has been responsible for funding the plan, and has employed a significant number of participants under the plan while it was so responsible. The term "controlled group" means a group of entities under common control. A "substantial member" of a controlled group is generally any entity whose assets comprise at least 5 percent of the assets of the controlled group.

In order to terminate a plan in a distress termination, a plan administrator is required to demonstrate that each contributing sponsor and each substantial member of each contributing sponsor's controlled group meets one of the following criteria: (1) a petition in bankruptcy or a State insolvency proceeding has been filed seeking liquidation of the entity and the petition has not been dismissed; (2) a petition in bankruptcy or a State insolvency proceeding has been filed seeking reorganization of the entity (or a case described in (1) has been converted to a reorganization), the petition has not been dismissed, and the bankruptcy court has approved the plan termination; (3) unless a distress termination occurs, the entity will be unable to pay its debts when due and will be unable to continue in business; or (4) with respect to the entity, the costs of providing pension coverage have become unreasonably burdensome, solely as a result of a decline in the workforce covered as participants under single-employer defined benefit pension plans of which the entity is a contributing sponsor.

In a distress termination, if there are benefit commitments in excess of PBGC-guaranteed benefits that cannot be paid out of current plan assets ("outstanding benefit commitments"), then the PBGC is required to appoint an independent fiduciary with respect to a special termination trust maintained for the benefit of participants. Each contributing sponsor of the plan and each member of the controlled group of a contributing sponsor is jointly and severally liable to the termination trust for the lesser of (1) 75 percent of the outstanding benefit commitments, or (2) 15 percent of the total benefit commitments.

In general, payment of liability by a contributing sponsor to a termination trust is to be made under commercially reasonable terms, with deferrals of certain amounts in years in which no person liable for the payment has pre-tax profits. Such deferred amounts are only payable after similar deferrals with respect to liability to the PBGC have been paid in full. However, there is no assurance that amounts will not be paid to plan participants before the employer's full liability to the PBGC has been discharged.

In a distress termination, if the plan assets are insufficient to fund guaranteed benefits, each contributing sponsor and each member of the controlled group of each contributing sponsor is jointly and severally liable to the PBGC for the sum of (1) the outstanding balance of any accumulated funding deficiency, and (2) the balance of the amount of any waived funding deficiencies. The full amount of a contributing sponsor's liability to the PBGC is due and payable as of the date of plan termination.

In addition, upon the termination of a plan pursuant to a distress termination, each contributing sponsor of the plan and each member of the controlled group of each contributing sponsor is jointly and severally liable to the PBGC for the sum of (1) the total amount of all unfunded guaranteed benefits, up to 30 percent of the collective net worth of the entities that are liable, (2) the excess of 75 percent of the unfunded guaranteed benefits over 30 percent of the collective net worth of the entities that are liable, and (3) interest on such amounts from the date of termination. Payment of this liability is generally to be made based on commercially reasonable terms, with deferrals of certain amounts in years in which the liable entities have no pre-tax profits.

The rules described above apply without regard to whether the employer or any member of the controlled group also maintains one or more plans that have assets in excess of termination liabilities.

PBGC claims in bankruptcy

Under present law, up to the 30-percent of net worth limit, the PBGC's claim has the priority status of a Federal tax for bankruptcy purposes. The remainder of the PBGC's claim generally has a lower priority status, that of an unsecured claim.

Termination by PBGC

The PBGC is authorized to commence proceedings to terminate a plan under certain circumstances and is required to do so if the plan does not have assets available to pay benefits that are currently due under the terms of the plan.

Reasons for Change

Standards for termination

The SEPPAA distress termination standards still permit ongoing, healthy companies to shift liabilities to the PBGC. Under SEPPAA, an employer in financial distress may terminate an underfunded plan pursuant to a reorganization while operating at a profit following the reorganization. This ability may also create a competitive disadvantage for other companies in the same industry that have not reorganized and have not reduced their liabilities. It is believed that a distress termination should not be available in these circumstances.

Lien rules

While eliminating a reorganization as a condition permitting a distress termination, it is believed that it is appropriate to add safeguards to protect the PBGC's and participants' interest in a reorganization or other bankruptcy proceeding.

The GAO Report stated that, as of January 1986, the PBGC had recovered or expected to recover only 14 percent of its total claims in 1983-1985. The report concluded that this low recovery was due to 2 factors. First, recovery was low because the 30 percent of net worth limit on employer liability prevented the PBGC from recovering the full amount of guaranteed benefits. Second, the PBGC claim has priority status in bankruptcy only up to the 30 percent of net worth limit. Because most claims for due but unpaid contributions exceed this limit, they (with limited exceptions) have a low priority in bankruptcy, that of an unsecured claim. Contributions that were due but unpaid as of the termination were the cause of 30 percent of the PBGC's claims in 1983-1985.

The GAO report concluded that increasing liability to the PBGC would improve the recovery rate, but would not be sufficient to reduce the potential liability of the PBGC. According to the report, a major problem continues to be the low priority of PBGC claims in bankruptcy. SEPPAA increased the ability of the PBGC to secure its claim by requiring security in the case of certain funding waivers. Even if SEPPAA had been in effect with respect to the claims on the PBGC during 1983-1985, however, the GAO found that only 4 percent of the total claims for the period could have been secured by the PBGC. The report recommended that the priority of PBGC claims in bankruptcy be increased.

It is believed that appropriate measures are necessary in order to better protect the PBGC and plan participants in the case of bankruptcy. Accordingly, the amendment provides that the plan is entitled to security in certain cases in which there is risk of loss to the PBGC or plan participants.

Employer liability

Present law places limits on the liability of the employer to plan participants and the PBGC. Under present law, plan participants may lose their right to pension benefits if a plan is terminated with assets less than termination liability because the employer is not fully liable for unfunded benefits and because the PBGC has no liability for benefits in excess of guaranteed benefits. Similarly, if a plan terminates with assets less than guaranteed benefits, the PBGC may not be made whole with respect to the benefits it pays participants because the employer is not fully liable to the PBGC for unfunded guaranteed benefits.

The limits on employer liability under present law may also adversely affect the funding of plans because certain employers have insufficient incentive to fund a plan in excess of the level of benefit commitments. This disincentive may increase the likelihood that participants will not receive their full pension benefits and that the PBGC will have to provide unfunded guaranteed benefits.

In order to encourage employers to fund promised benefits, ensure that plan participants receive promised benefits, and ensure that the PBGC is made whole with respect to guaranteed benefits it pays, it is believed that employers should be fully liable for their pension promises.

Explanation of Provisions

Employer liability

Under the amendment, the required plan asset level for a standard termination is increased from the present-law requirement of benefit commitments to the full level of the plan's termination liability to participants. As under present law, the plan's termination liability is all liabilities to employees and their beneficiaries under the plan, and includes all fixed and contingent benefits that would be provided if the plan had sufficient assets (Code sec. 401(a)(2)). Of course, such liability is to be determined without regard to the level of plan assets.

Under the amendment, a defined benefit pension plan with assets insufficient to provide its termination liability to participants is unable to terminate unless the employer (and controlled group) can satisfy the criteria for a distress termination. Following a distress termination, the employer's (and controlled group's) liability to participants is increased from the present-law percentage of benefit commitments to the full amount of the plan's unfunded termination liability to the extent not guaranteed by the PBGC, and the employer's (and controlled group's) liability to the PBGC is increased to the full amount of unfunded guaranteed benefits.

Standards for termination

The amendment provides that a reorganization does not qualify as a condition under which a distress termination is permitted. Thus, under the amendment, in order to terminate a plan in a distress termination, a plan administrator is required to demonstrate that each entity that is a contributing sponsor or a member of a contributing sponsor's controlled group meets one of the following criteria: (1) a petition in bankruptcy or a State insolvency proceeding has been filed seeking liquidation of the entity and the petition has not been dismissed or converted to a petition seeking reorganization, (2) unless a distress termination occurs, the entity will be unable to pay its debts when due and will be unable to continue in business, or (3) with respect to the entity, the costs of providing pension coverage have become unreasonably burdensome, solely as a result of a decline in the workforce covered as participants under single-employer pension plans of which the entity is a contributing sponsor.

Lien rules

Consistent with the increase in the liability of the employer to the PBGC, the amendment removes the 30-percent of net worth limitation on the amount of the PBGC lien that arises upon plan termination.

In addition, under the amendment, a statutory lien arises in favor of the plan to the extent that as of the close of a plan year (1) the plan's assets are less than 70 percent of current liability and (2) the unfunded current liability exceeds $25 million. The unamortized portion of the plan's unfunded old liability amount is disregarded in making these determinations. The lien is on all property and rights to property, whether real or personal, belonging to the contributing sponsor and the members of the contributing sponsor's controlled group.

The lien arises on the first day of the plan year following the plan year in which the determination is made, and continues until the close of the plan year in which the plan is not described in (1) or (2) above. If, from one plan year to the next, the level of unfunded current liability increases, the amount of the lien is increased by the amount of the increase in plan underfunding. The employer is required to notify the PBGC when the plan is described in (1) and (2) above.

Rules similar to the rules in section 4068(c), (d), and (e) of ERISA apply with respect to the lien and the amount on which it is based. As under section 4068(c), a perfected lien is treated as a Federal tax lien, and an unperfected lien is treated as a Federal tax claim. In addition, any lien created by this provision may be perfected and enforced by the PBGC or, at its direction, by the contributing sponsor or any member of the controlled group of the contributing sponsor.

Effective Dates

The provisionss are generally effective in the case of terminations where notice to the PBGC is provided after October 16, 1987, and terminations instituted by the PBGC after October 16, 1987. The provision creating a lien where unfunded current liability exceeds certain levels is effective with respect to plan years beginning after the date of enactment.

4. Employer Access to Assets of Overfunded Plans

Present Law

Access to plan assets

Under present law, a trust forming part of a pension plan is not qualified under the Code unless it is impossible under the trust instrument, prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the trust assets to be used for, or diverted to, purposes other than for the exclusive benefit of employees or their beneficiaries. However, upon termination of the plan and after satisfaction of all fixed and contingent liabilities of the participants and beneficiaries (termination liability), the employer may recover any excess assets remaining in the trust that are due to erroneous actuarial computations.

Similarly, under ERISA, the assets of an employee benefit plan may not inure to the benefit of any employer and are to be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries and of defraying reasonable expenses of administering the plan. However, any excess assets of a plan may be distributed to the employer upon termination of the plan if

(1) all liabilities of the plan to participants and their beneficiaries have been satisfied, (2) the distribution does not contravene any provision of law, and (3) the plan provides for such a distribution.

Under present law, whether the employer has the right to the excess assets of a pension plan or is required to share the excess assets with plan participants is generally determined under the plan document. Thus, if the plan document provides that the employer is entitled to the reversion of excess assets, the employer is not required to share the reversion with participants. A majority of the cases provide that, subject to any applicable collective bargaining agreements, a plan may be amended at any time prior to termination of the plan to provide that the excess assets may revert to the employer.

Upon termination of a plan, all benefits as of the date of termination are required to become 100 percent vested and nonforfeitable. In addition, benefits generally are to be distributed or annuitized.

Implementation guidelines

Although an employer is not permitted to recover excess assets except upon termination of a plan, certain procedural guidelines permit transactions that, in effect, permit the withdrawal of assets from an ongoing plan. Typical examples of such transactions are termination-reestablishment and spinoff-termination transactions.

In a termination-reestablishment transaction, the employer terminates a defined benefit plan, recovers the excess assets, and then establishes a "new" plan that generally covers the same employees and provides the same or substantially similar benefits as the old plan. In a spinoff-termination transaction, a single plan is split into 2 plans, 1 plan covering retirees and 1 covering active employees. The excess assets are allocated to the plan covering retirees. That plan is then terminated, allowing the employer to recover the excess assets.

In response to concern that reversions can reduce the security of participants' benefits, procedural guidelines were developed jointly by the Department of the Treasury, the Department of Labor, and the PBGC. The procedures, referred to as the "Implementation Guidelines for Terminations of Defined Benefit Pension Plans" or the "Implementation Guidelines," were issued by the Administration as a news release on May 24, 1984.

The Implementation Guidelines set forth administrative procedures for processing certain terminations of qualified defined benefit pension plans involving reversions of excess assets to the plan sponsor. The guidelines generally provide that a bona fide termination of a defined benefit pension plan will be recognized as having occurred under either a spinoff-termination or a termination-reestablishment transaction only if certain conditions are met.

A spinoff-termination is considered bona fide under the guidelines only if (1) the benefits of all employees are vested as of the date of the termination; (2) all benefits accrued by all employees as of the date of the termination are provided for by the purchase of annuity contracts; (3) the continuing plan adopts a special amortization period (with the approval of the IRS); and (4) appropriate notice is provided to employees.

Under the Implementation Guidelines, termination- reestablishment transactions are generally recognized as bona fide. If the new plan provides credit for service before that plan was adopted, however, the guidelines do not treat the transaction as bona fide unless a special amortization period is adopted (with the approval of the IRS).

The guidelines note that spinoff-terminations or termination-reestablishments may affect the qualified status of plans because the Code requires that qualified plans be permanent. The guidelines generally provide that the permanency requirement prohibits an employer that has engaged in a spinoff-termination or termination-reestablishment transaction from engaging in another such transaction for at least 15 years.

Reasons for Change

It is believed that the present law standards, as reflected in the Implementation Guidelines, and the present-law excise tax on reversions are appropriate rules for addressing the issue of employer access to excess plan assets.

Explanation of Provision

The amendment confirms present law as contained in the Implementation Guidelines.

Effective Date

The provision is a clarification of present law.

5. Increase in PBGC Premium Rates (sec. 4560 of the bill)

Present Law

In general

The PBGC was created in 1974 by ERISA to provide an insurance program for benefits under defined benefit pension plans maintained by private employers. According to the PBGC's latest annual report, the single-employer insurance program currently covers more than 30 million participants in more than 110,000 defined benefit pension plans. PBGC revenues include premiums charged to defined benefit pension plans, earnings on investments, and collections from sponsors of terminated plans.

Premiums

Since its inception, the pension insurance program has charged a flat-rate premium based on the number of plan participants. ERISA initially authorized an annual per-participant premium of $1.00. The premium rate was raised to $2.60 for plan years beginning after December 31, 1977. SEPPAA increased the rate to $8.50, effective for plan years beginning after December 31, 1985.

Liability for premiums

Under present law, the plan administrator is liable for the payment of premiums.

Reasons for Change

In light of the PBGC deficit, a raise in the PBGC premium is needed. In its report, the GAO estimated that annual premium revenues of $446 million would be needed to retire a $4 billion deficit over 15 years at the PBGC's current interest rates. Projected annual revenue, however, is only $298 million, or 33 percent less than $446 million. Further, the GAO concluded that additional revenues would be needed to pay future expected claims and the program's administrative expenses.

It is believed that it is equitable to base the increased PBGC premium in part on the extent of a plan's underfunded status so that the premium reflects in part the potential PBGC liability created by the plan. However, basing the entire increase on a plan's underfunded status would unduly burden financially distressed plans and employers and could lead to a greater crisis for the PBGC if a significant percentage of these plans were terminated. Thus, it is believed that some of the necessary revenues should be derived from an increase in the flat premium.

As under the minimum funding rules, it is believed that the employer sponsoring a plan and related employers should be responsible for liabilities associated with the benefits promised under the plan. Thus, it is believed that the employer sponsoring the plan and all related employers should be liable for payment of the premium.

Explanation of Provision

Under the amendment, the flat-rate per-participant PBGC premium is increased to $14. In addition, the amendment applies an exposure-related per-participant premium based on the amount of potential liability the plan creates for the PBGC.

The exposure-related per-participant premium is determined by dividing an amount based on the plan's unfunded current liability by the number of plan participants in the plan at the end of the preceding plan year. The amount based on unfunded current liability is $6.00 for each $1,000 of unfunded current liability as of the end of the preceding plan year.

The additional per-participant premium is not to exceed $70 (indexed beginning in 1989 in accordance with the social security benefit and contribution base).

The $70 cap (indexed) is reduced in the case of certain plans. If an employer made the maximum deductible contributions to the plan for 1 or more of the 5 plan years preceding the first plan year beginning after December 31, 1987 (i.e., for a calendar year plan year, 1983-1987), then the cap on the exposure-related premium is reduced by $10 for each plan year for which such contributions were made. The $10 amount is indexed at the same time and same manner as the $70 cap. This special rule operates to reduce the exposure-related premium only for the first 5 plan years the premium is in effect.

As under the new funding rules, the exposure-related premium does not apply to any plan that has no more than 100 participants on each day of the preceding plan year. For purposes of this 100-participant rule, all defined benefit plans (including multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) are treated as one plan. With respect to multiemployer plans, only employees of the employer (or controlled group) are taken into account. In the case of a plan with more than 100 but less than 150 participants on each day during the preceding plan year, the amount of the exposure-related premium is determined by multiplying the otherwise required additional premium by 2 percent for each participant in excess of 100.

In addition, the special rule disregarding certain pre-participation service in calculating current liability under the funding rules applies in calculating current liability for purposes of the exposure-related premium. However, for premium purposes pre-participation years of service are taken into account if the participant has 5 or more years of service.

The amendment also provides that, with respect to a single-employer plan, the contributing sponsor, as well as the plan administrator, is liable for payment of the premium and that each member of the contributing sponsor's controlled group is jointly and severally liable for such payment.

Under the amendment, all amounts related to the exposure-related premium and the increase in the flat-rate premium are to be deposited in a separate revolving fund. Amounts in this fund may not be used to pay administrative costs of the PBGC or benefits under any plan terminated before January 1, 1988, unless no other amounts are available.

Effective Date

These provisions apply to plan years beginning after December 31, 1987.

6. Multiemployer Plans

The provisions described in 2 through 5, above, do not apply to multiemployer plans.

G. ESTATE AND GIFT TAXES

Retention of 1987 Rates for 2 Years (sec. 4561 of the bill and sec. 2001 of the Code)

Present Law

The estate and gift taxes are unified, so that a single progressive rate schedule is applied to an individual's cumulative gifts and bequests. The generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate.

For 1987, the gift and estate tax rates begin at 18 percent on the first $10,000 of taxable transfers and reach 55 percent on taxable transfers over $3 million. For transfers occurring after 1987, the maximum gift and estate tax rate is scheduled to decline to 50 percent for taxable transfers over $2.5 million.

Reasons for Change

It is inappropriate to permit revenue from existing taxes to be reduced at a time when additional revenues are needed to reduce the budget deficit.

Explanation of Provision

The scheduled decline in gift and estate tax rates is deferred for two years. The maximum rate declines to 50 percent for decedents dying, and gifts made, after December 31, 1989.

Effective Date

The provision is effective for decedents dying, and gifts made, after December 31, 1987.

H. EXCISE TAXES

1. Telephone Excise Tax: 3-Year Extension (sec. 4571 of the bill and sec. 4251 of the Code)

Present Law

A 3-percent excise tax is imposed on amounts paid for local telephone service, toll (long-distance) telephone service, and teletypewriter exchange service (Code sec. 4251). The tax is scheduled to expire after December 31, 1987.

Exemptions from the tax are provided for communications service furnished to news services (except local telephone service to news services), international organizations, the American National Red Cross, servicemen in combat zones, nonprofit hospitals and educational organizations, State and local governments, and for toll telephone service paid by a common carrier, telephone or telegraph company, or radio broadcasting company in the conduct of its business. Exemptions are also provided for installation charges, certain coin-operated service, and private communications systems (e.g., certain dedicated lines leased to a single business user).

Reasons for Change

It is inappropriate to permit existing taxes to expire at a time when additional revenues are needed to reduce the budget deficit. Therefore, it is felt that a 3-year extension of the telephone excise tax is appropriate in view of the existing budgetary deficit situation.

Explanation of Provision

The amendment extends the current 3-percent telephone excise tax for 3 years, through December 31, 1990.

Effective Date

The provision is effective for telephone bills rendered after December 31, 1987, and before January 1, 1991.

2. Collect Diesel Fuel and Special Motor Fuels Taxes on Sales to Retailer (sec. 4572 of the bill and sec. 4041, 4101, 6421, and 6427 of the Code)

Present Law

The diesel fuel and special motor fuels excise taxes generally are imposed on the sale of the taxable fuel by a retail dealer to the ultimate consumer of the fuel. Under an exception, retail dealers may elect to have wholesale distributors collect and pay the diesel fuel tax when the fuel is sold to the retailer.

Reasons for Change

Imposition of the tax at the retail level has fostered inefficient collection procedures and encouraged tax avoidance schemes because there are many tax collectors at the end of a long marketing chain. Imposing these taxes at an earlier stage in the marketing of these fuels would reduce opportunities for evading payment of the fuels taxes. Collection of excise taxes at the point in the distribution chain with a smaller number of taxpayers provides for more efficient administration of the tax since there are fewer taxpayers for the Internal Revenue Service to monitor. Furthermore, collecting these excise taxes at a uniform marketing level eliminates any special advantage for a single industry segment, e.g., integrated operations versus independent wholesale dealers.

Explanation of Provision

The excise taxes on diesel and special motor fuels and nongasoline aviation fuels are imposed on sales by importers and producers; wholesale distributors may elect to be treated as producers, if they satisfy registration and bonding requirements to be established by Treasury.

The provisions of present law permitting tax-free sales for certain exempt purposes are repealed. Instead, taxpayers who purchase such fuels for nontaxable uses may claim refunds or credit the amount of tax they paid against their income tax liability. In addition, Treasury is authorized to require such information reporting and registration that is necessary to prevent evasion of the tax.

Effective Date

The provision is effective on January 1, 1988.

3. Extension of Termination Date for Coal Excise Tax Rate (sec. 4573 of the bill and sec. 4121 of the Code)

Present Law

A manufacturer's excise tax is imposed on the sale or use of domestically mined coal by the producer (Code sec. 4121). Under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the rate of tax was increased, effective April 1, 1986, to $1.10 per ton of coal from underground mines, and 55 cents per ton of coal from surface mines, but not to exceed 4.4 percent of the sales price.

Amounts equal to the revenues collected from the coal excise tax are appropriated automatically to the Black Lung Disability Trust Fund. The Trust Fund pays certain black lung disability benefits to coal miners (or their survivors) who have been disabled by black lung disease in cases where no coal mine operator is found specifically responsible for the individual miner's disease.

Under present law, the tax rate is scheduled to revert to 50 cents on underground coal and 25 cents on surface coal (but not to exceed two percent of price) on the earlier of January 1, 1996 or the first January 1 as of which there is (1) no balance of repayable advances from the general fund to the Trust Fund, and (2) no unpaid interest on such advances.

Reasons for Change

It was concluded that the termination date for the coal excise tax rate presently in effect should be extended in order to provide for the long-term solvency of the Black Lung Trust Fund. As of the beginning of fiscal year 1987, the Trust Fund deficit (i.e., the amount of advances repayable to the general fund) was $2.9 billion.

Explanation of Provision

The termination date for the coal excise tax rate enacted in COBRA is extended from January 1, 1996 to the earlier of (1) January 1, 2014 or (2) the date the Trust Fund achieves solvency (as defined under the present-law termination provision).

Effective Date

The extension of the termination date for the present-law coal excise tax rate is effective from January 1, 1996 to January 1, 2014, subject to the solvency provision described above.

I. EMPLOYMENT TAXES

1. Railroad Retirement Provisions (secs. 4581-4584 of the bill and secs. 3201 and 2331 of the Code)

Present Law

The Railroad Retirement Program consists of a tier I benefit structure which is generally equivalent in benefits and financing to the Social Security program and a separately financed tier II benefit structure. Under present law, the tier II program is financed primarily by a payroll tax of 14.75 percent for employers and 4.25 percent for employees. This tax is applied to wages up to $32,700 per year. (This wage base amount is increased annually by the increase in average annual wages in the general economy.)

Tier II benefits are includible in income for income tax purposes in the same manner as benefits received under a qualified pension plan. However, the 1983 amendments to the Railroad Retirement Program appropriate from the general fund to the Railroad Retirement Account an amount equal to the increase in income tax liability that results from including tier II benefits in income. This appropriation to the Railroad Retirement Account is limited to an aggregate total of $877 million and applies only to benefits received prior to October 1, 1988.

Reason for Change

The 1983 amendments to the Railroad Retirement Program require an annual report on the solvency of the program. The 1987 report includes an analysis by the chief actuary of the program indicating that program is inadequately funded and recommending changes to address the situation. The chief actuary also recommends the establishment of a board to study whether fundamental changes in method of paying for the program need to be considered by the Congress.

Explanation of Provisions

Increase in railroad retirement tax

The provision increases the employer tier II tax by 1.35 percentage points to 16.1 percent. The employee rate is increased by 0.65 percentage points to 4.9 percent.

Commission on Railroad Retirement Reform

The provision also establishes an eight-member Commission to study alternative methods of securing the long-range solvency of the Railroad Retirement Program. The President is to appoint four members, representing railroad management, railroad labor, commuter railroads, and the general public. The President pro tempore of the Senate is to appoint two members representing the general public after consultation with the Chairmen of the Senate Committees on Finance and on Labor and Human Resources. The Speaker of the House of Representatives is to appoint two members representing the general public after consultation with the Chairmen of the Committees on Ways and Means and on Energy and Commerce. The Commission is to submit its findings to the Congress by October 1, 1989.

The provision also eliminates the $877-million limit on the amount of general funds that are appropriated to the Railroad Retirement Account on the basis of income taxes on tier II benefits, and provides that such appropriations will be made for two additional years based on tier II benefits paid through September 30, 1990.

Effective Date

The tax rate increases are effective for wages paid after December 31, 1987. The other provisions are effective upon the date on enactment.

2. FUTA Tax: Three-Year Extension of Repayment Tax; Transfer of Funds into the Federal Unemployment Account (secs. 4585-4586 of the bill, sec. 3301 of the Code, and sec. 90 of the Social Security Act)

Present Law

The Federal Unemployment Tax Act (FUTA) generates revenues which are allocated among several accounts in the Federal Unemployment Trust Fund. Funds in the Employment Service Administration Account are used to meet the Federal and State administrative costs of operating unemployment compensation programs and most of the cost of Employment Service operations. The Extended Unemployment Compensation Account (EUCA) is used to meet half the cost of extended unemployment benefits (EB), which are paid in times of unusually high unemployment. (The other half of EB costs are funded from State unemployment taxes.) The Federal Unemployment Account (FUA) is a reserve account from which States may borrow funds in the event the State unemployment account is temporarily unable to meet benefit liabilities.

Each of these accounts in the Trust Fund has a statutory ceiling. When the ceiling is reached, excess funds are distributed among the account according to rules specified in Title IX of the Social Security Act. When all of these accounts reach their ceiling levels, any excess amounts would be distributed to the State unemployment accounts in the Trust Fund.

The gross Federal unemployment tax rate is 6.0 percent, plus a temporary 0.2-percent rate enacted in 1976. In general, employers qualify for a credit of 5.4 percentage points against this tax, leaving a net Federal tax of 0.6 percent plus the temporary 0.2 percent. The tax is paid by employers on the first $7,000 of annual earnings of each employee. (In some States, the 5.4-percent credit is reduced to recover outstanding State loans from FUA.)

The temporary 0.2-percent additional rate was added in order to repay borrowing of the Federal Unemployment Trust Fund from the general fund of the Treasury during the mid 1970's. The outstanding indebtedness was repaid this year, and the additional tax will terminate at the end of 1987.

Reasons for Change

While the EUCA account has fully repaid the outstanding borrowing from the general fund of the Treasury, the experience of the 1970's indicates that the Unemployment Fund may need to accumulate a higher level of reserves than provided under present law, in order to have reasonable assurance of weathering economic cycles without undue reliance on general fund borrowing.

Explanation of Provisions

The temporary 0.2-percent additional FUTA tax rate is to be continued for three additional years, through 1990. The statutory ceilings on the EUCA and FUA accounts are increased in order to accommodate the additional revenue generated by extending the tax rate. The EUCA account ceiling is increased from 1/8 of the amount of total annual wages to 3/8 of total annual wages. The FUA account ceiling is increased from 1/8 of total annual wages to 5/8 of total annual wages.

Effective Date

The provision is effective for wages paid during calendar years 1988 through 1990.

3. FICA Tax Provisions

a. Expand employer share of FICA tax to include all cash tips (sec. 4587 of the bill and sec. 3121(q) of the Code)

Present Law

The FICA taxes imposed on the employee and the employer generally are equal. The employer is responsible for withholding the employee's share of the tax from the employee's wages and remitting the tax, together with the employer's share of the tax, to the Internal Revenue Service.

Special rules apply to tips. For purposes of the employee FICA tax, all tips received by an employee are considered remuneration for services and are subject to the tax. The tips generally are deemed to be received at the time the employee files a written statement with the employer reporting the receipt of the tips. Tips are subject to FICA taxes only in the case of employees who receive at least $20 in cash tips in a month. Tips in a medium other than cash are not subject to FICA taxes.

However, the full amount of tips received by an employee usually is not subject to the FICA tax imposed on the employer. For purposes of the employer's share of FICA taxes, the employee is deemed to receive wages only to the extent of the excess of the Federal minimum wage rate over the actual wage rate paid by the employer. Any tips received in excess of the difference between the wages paid and the minimum wage are not subject to the employer's portion of the tax.

Reasons for Change

Under present law, an employee is required to pay FICA taxes on the total amount of his or her cash tips up to the Social Security wage base. The employer, however, is required to pay FICA taxes only on a portion of the tips. Because Social Security benefits are determined with respect to the entire amount of tips, current law in effect provides a benefit to employers whose employees receive part of their compensation in the form of tips, as compared to other employees who receive all their compensation as salaries. It is believed that to apportion the costs of Social Security benefits more accurately, employers should be subject to tax on all tips which are credited for benefit purposes.

Explanation of Provision

Under this provision, all cash tips which are subject to the employee FICA tax are included within the definition of wages for purposes of the employer's share of FICA taxes. Thus, employers must pay FICA taxes on the total amount of cash tips and other remuneration, up to the Social Security wage base.

Effective Date

This provision is effective for remuneration received on or after January 1, 1988.

b. Extend FICA tax to include inactive duty earnings of military reservists and certain other earnings (secs. 4588, 4589, 4591, and 4592 of the bill and secs. 209 and 210 of the Social Security Act)

Present Law

Under present law, certain forms of earnings paid to employees are exempt from FICA taxes. These earnings include the following:

Armed Forces reservists.—Approximately 1.4 million Armed Forces reservists do not receive credit for Social Security benefits and are not subject to Social Security (FICA) taxes for inactive duty earnings paid for "inactive duty training." Earnings from full-time active duty or from "active duty for training" (training sessions lasting several weeks) constitute covered employment under current law.

Agricultural workers.—Cash remuneration paid to an employee in any taxable year for agricultural labor is excluded from the definition of wages unless the employee receives more than $150 during the year for such labor or the employee works for the employer more than 20 days during the year and is paid on a time basis.

Individuals aged 18-21.—Services performed by individuals under age 21 who are employed by their parents, even if employed in the parent's trade or business, do not constitute covered employment under present law.

Spouses.—Services performed by an individual in the employ of a spouse do not constitute covered employment.

Reasons for Change

It is believed that the wages of the particular groups of employees described above should receive the same treatment generally accorded other wages for FICA tax purposes. These provisions also ensure that these individuals receive Social Security coverage (including disability and survivor benefits).

Explanation of Provision

The amendment extends credit toward Social Security benefits, and imposed FICA taxes, with respect to services performed by reservists in "inactive duty training"; to services performed by individuals aged 18-21 working for their parents in a trade or business; and to services performed by an individual in the employ of his or her spouse's trade or business.

The amendment also requires, with respect to agricultural labor, that: (1) any remuneration for agricultural labor paid by an employer to an employee constitutes wages for FICA purposes if the employer pays more than $2,500 to all employees for such labor during the taxable year; (2) the $150 annual cash pay test is to be applied if the $2,500 annual payroll test is not met; and (3) the 20-day test be eliminated.

Effective Date

These provisions are effective January 1, 1988.

c. Treatment of group-term life insurance as wages under FICA (sec. 4590 of the bill and sec. 209 of the Social Security Act)

Present Law

The cost of group-term life insurance provided by an employer to an employee is excluded from the definition of wages for purposes of the FICA tax. For income tax purposes, the cost of employer-provided group-term life insurance is includible in an employee's gross income to the extent that the coverage exceeds $50,000. Additionally, the total amount of employer-provided group-term life insurance is included in an employee's gross income to the extent that the coverage is provided on a discriminatory basis (sec. 89).

Reasons for Change

It is believed that the FICA tax treatment of group term life insurance provided by an employer for an employee should be conformed to the treatment of such benefit for income tax purposes.

Explanation of Provision

The provision treats the cost of employer-provided group-term life insurance as wages for FICA tax purposes to the extent such cost is includible in gross income for income tax purposes.

Effective Date

The provision is effective January 1, 1988.

J. USER FEES

1. Internal Revenue Service Fees (sec. 4595 of the bill)

Present Law

The Internal Revenue Service (IRS) currently provides written responses to questions of individuals, corporations, and organizations relating to their tax status or the effects of particular transactions for tax purposes. The IRS responds to these inquiries through the issuance of letter rulings, determination letters, and opinion letters.

A letter ruling is a written statement issued by the National Office of the IRS that interprets and applies the tax law to a specific set of facts. A letter ruling generally is followed by the IRS on audit in determining the tax liability of the recipient of the ruling.

A determination letter is a written statement issued by a district director of the IRS that applies principles previously announced by the National Office of the IRS to a specific set of facts. A determination letter generally is issued in the same circumstances as a letter ruling and is followed by the IRS on audit in determining the tax liability of the recipient of the letter. Most determination letters involve the qualification of retirement plans and the status of organizations seeking exemption from tax.

An opinion letter is a written statement issued by the National Office of the IRS that addresses the acceptability of the form of a master or prototype pension plan and any related trust or custodial account.

The IRS currently does not charge taxpayers for issuing letter rulings, determination letters, or opinion letters.

Reasons for Change

It is believed that, as the Administration has proposed in the last several budgets, the relatively small number of persons that request letter rulings, determination letters, and opinion letters should pay for the benefit of these services. It is also believed that the provision should not be made permanent at this time so that the Congress may examine the impact of the provision on taxpayer compliance.

Explanation of Provision

The amendment requires the IRS to charge a fee for each request for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The amount of the fee is to vary based on the type of request, as follows:

Category	Fee
Employee plan ruling and opinion	$400
Exempt organization ruling	$320
Employee plan determination	$250
Exempt organization determination	$200
Chief counsel ruling	$200

The IRS is authorized to vary the amount of the fee charged for subcategories of requests based on the average time for (and the difficulty of) complying with requests in the subcategories. In addition, the IRS is authorized to provide exemptions and reduced fees. The IRS may vary the amount of the fee or provide exemptions or reduced fees only if the average fee charged during a fiscal year for requests in any category is not less than the fee listed above for that category.

The amount of the fee is payable in advance and is refundable only if the IRS refuses to respond to the request. The fee is not refundable if the person making the request withdraws the request prior to the issuance of the ruling or determination.

Effective Date

The provision applies to requests filed on or after the first day of the second calendar month that begins after the date of enactment. The provision does not apply to requests filed after September 30, 1990.

2. Extensions and Increases in Certain Alcohol, Tobacco, and Firearms Occupational Taxes (sec. 4596 of the bill and secs. 5091, 5111, 5121, 5131, 5271, 5801, and 5845 of the Code)

Present Law

Occupational taxes are imposed on numerous business activities involving the production and marketing of alcohol, tobacco, and firearms products. Brewers currently pay $110 per year for each brewery operated by them, except any brewer of fewer than 500 barrels a year pays $55 per year (sec. 5091). Manufacturers and importers of National Firearms Act (NFA) firearms pay a $500 per year occupational tax for each place of business, except a person who manufactures or imports only weapons classified as "any other weapon" under section 5845(e) pays a tax of $25 per year (sec. 5801). No occupational taxes are imposed on distillers, wineries, or tobacco manufacturers.

Dealers in NFA firearms generally are subject to an annual occupational tax of $200 per place of business; dealers who deal only in weapons classified as "any other weapon" under section 5845(e) are subject to an annual tax of $10 per place of business (sec. 5801).

An annual $255 per place of business occupational tax is imposed on wholesale liquor dealers; an annual $123 tax is imposed on wholesale beer dealers (sec. 5111).

An annual occupational tax of $54 per place of business is imposed on retail liquor dealers; the tax is $24 per place of business for retail beer dealers (sec. 5121). A special tax of $4.50 per month in which sales are made is imposed on "limited retail dealers" in distilled spirits; the tax is $2.20 per month for limited retail dealers in beer and wine only (sec. 5121).

Persons permitted to use distilled spirits without payment of tax, or who deal in or use specially denatured distilled spirits, must obtain permits under present law, but no occupational tax is imposed on these persons with respect to this activity (sec. 5271).

Present law permits drawbacks (refunds) of the distilled spirits tax in certain cases. Persons receiving drawbacks of this tax for distilled spirits to be used for nonbeverage purposes are subject to an occupational tax based on the amount of alcohol used. The tax ranges from $25 per year (drawbacks not exceeding 25 proof gallons) to $100 per year (drawbacks exceeding 50 proof gallons) (sec. 5131).

Reasons for Change

The Bureau of Alcohol, Tobacco, and Firearms (BATF) incurs significant expenses in regulating the three industries over which it has jurisdiction. The President proposed in his budget that the direct beneficiaries of these regulatory provisions pay a greater share of the costs incurred by BATF.

The amendment generally concurs with the President's proposal. It was determined that the appropriate way to accomplish the proposal was to increase the present occupational taxes, which generally have not been increased since the early 1950s, and to impose those taxes more uniformly across the businesses affected.

Explanation of Provisions

The present producer/manufacturer occupational taxes are increased to annual amounts of $1,000 per place of business for producers of all taxable alcoholic beverages (distilled spirits, wine, and beer), manufacturers of all taxable tobacco products, and for firearms producers. A special rate of $500 per year applies to businesses having gross receipts of less than $500,000 in the preceding taxable year. For purposes of this special rate, all members of a controlled group of corporations (substituting 50 percent for the general 80 percent test of control) are treated as one business.

The present firearms dealer occupational tax is increased to $500 per year per place of business.

The present alcoholic beverage wholesale dealer occupational taxes are combined and imposed at an increased rate of $500 per year per place of business.

The present alcoholic beverage retail dealer occupational taxes are combined and imposed at an increased rate of $250 per year per place of business. The present occupational taxes on limited retail dealers are repealed. The retail dealer occupational tax further is extended to all persons required to acquire permits for tax-free use of distilled spirits under section 5271.

The three occupational tax rates for persons receiving drawbacks of the distilled spirits tax for spirits used in nonbeverage products are combined and increased to $500 per year per place of business.

Effective Date

These provisions are effective on January 1, 1988.

As under present law, the occupational taxes generally will continue to be paid for a period of 12 months, covering the period July 1-June 30. Thus, subject to special rules for the period January 1-June 30, 1988, all persons subject to tax under the provisions of the bill are liable for the entire annual tax on July 1, 1988.

For the period January 1-July 1, 1988, a series of special rules will apply. Persons initially subject to tax as a result of the provisions are liable for a tax equal to one-half of the otherwise applicable annual rate on January 1, 1988.

In the case of persons who paid an occupational tax during calendar 1987, for which no further tax is due until July 1, 1988, under present law, a tax is due on January 1, 1988, in an amount equal to one-half of the excess of the new tax rate for the occupation involved over the present-law rate.

3. Customs User Fees (sec. 4597 of the bill)

Present Law

As enacted in the Omnibus Budget Reconciliation Act of 1986, an *ad valorem* user fee is applied to all formal entries of merchandise imported for consumption in the amount of 0.22 percent during fiscal year 1987, dropping to the lesser of 0.17 percent or the rate which will provide revenue equal to the appropriated level of customs' commercial operations in fiscal year 1988, and expiring September 30, 1989. The fee does not apply to articles classifiable in schedule 8 of the Tariff Schedules (including products containing U.S. components which are classifiable in item 807.00 of the Schedules and U.S. articles returning to the United States after having been processed abroad which are classifiable in item 806.30).

Reasons for Change

The customs user fees provisions are amended in response to concerns expressed by the Administration and the trading community based on experience with the users fees over the past year.

The Administration's budget proposal would have extended the customs users fees indefinitely and modified the schedule 8 exemption insofar as it applies to imported articles containing U.S. components. Although it is intended to adopt the Administration's recommendation with respect to the schedule 8 exemption, the program is extended for one additional year, to September 30, 1989, rather than extending it indefinitely. It is also intended that the amendment relate to a number of concerns about the way the program has been administered thus far which the Senate would like to see addressed satisfactorily before it will consider making this program permanent.

It is further intended that the amendment relate to particular concerns that the fundamental purpose of the program of providing adequate funding for the commercial operations of the Customs Service is not being met. During the first year of the program, the Office of Management and Budget did not allow any of the proceeds of the customs users fees account to be spent for the commercial operations of the Customs Service. Further, the Administration's budget proposal for the Customs Service for fiscal year 1988 once again called for a drastic reduction of 2,000 customs officers. Such cuts should not be necessary if the customs users fees program is being properly implemented.

The intention also is that the amendment modify current law dealing with the disposition of user fees and the manner of their application to fund Customs' commercial operations. This modification is designed to clarify current law in order to obviate administrative problems which have arisen from OMB's interpretation of current law. Under its interpretation, OMB has seen fit to maintain two user fees accounts, one for passenger and conveyance fees and another for the commercial operations fee on imports. Because certain legal requirements, such as the procedure for recommending an increase or decrease in user fees, are triggered by the user fee account balance in relation to expenditures, it is believed that administration and oversight will be simplified if only a single Customs User Fees Account is established. All users fees are required to be deposited in a single Customs User Fees Account. Current law is to be further clarified by reiterating that funds deposited in the Customs User Fees Account be employed, to the extent provided in appropriations acts, to reimburse all costs of the Customs Service for commercial operations. Finally, the intention is to include provisions designed to ensure that operators of foreign trade zones and customs bonded warehouses would no longer be, in effect, assessed twice for customs transactions occurring at such facilities.

Explanation of Provision

The amendment changes these user fees provisions. First, the expiration date for the fees would be extended for one additional year, until September 30, 1990. Second, in order to avoid placing a double burden on operators of foreign trade zones and customs bonded warehouses, a provision has been added precluding the Customs Service from assessing an annual fee on such operators in addition to the per-entry fee that is now applicable to merchandise withdrawals from such facilities.

Third, the amendment changes provisions of present law that permit importers to avoid the application of the users fees entirely if any portion of the imported article is of U.S. origin and eligible for duty-free treatment under items 806.30 or 807.00 of the Tariff Schedules. As amended, only the value of the U.S. components or materials which are eligible for duty-free treatment under such provisions would be exempt from the users fee. The value of the foreign components of the imported article would be subject to the fee.

To ensure that no additional recordkeeping burdens are imposed upon the public as a result of this amendment, the following simplified accounting requirements applicable to *duty-free* articles entering, or eligible for entry, under items 806.30 and 807.00 of the Tariff Schedules of the United States (TSUS) should be implemented. These requirements would apply to all imports of: (1) articles with U.S. content; (2) commingled merchandise consisting of articles with U.S. content and like or similar articles not containing U.S. content; and (3) articles exported from the United States for processing abroad and returned to the United States for further processing.

Importers may enter the articles on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business. The data would be calculated according to generally accepted accounting principles so as to establish the following for a one-year period: (1) the total value of all articles imported, based on U.S. customs principles of valuation; (2) for item 807.00 articles, the U.S. content portion of the value cited in item 1 value represented by processing abroad; and (3) for item 806.30 articles, the portion of the item 1 value represented by processing abroad. In this context, the valuation of all imports during an import year would be based on data from the prior import year and applied across-the-board to such imports, thereby eliminating discrete calculations with respect to articles, individual components contained within such articles, and individual entries. Accordingly, 1986 data would apply to 1987 imports, 1987 data to 1988 imports, and so on. It is intended that the term "import year" be defined as either a calendar year or some other 12-month cycle, depending on the accounting cycle utilized by the importer.

Upon termination of operations by an importer, a "catch-up" adjustment reflecting actual percentages from the year prior to the termination would be required to ensure that the importer has paid the appropriate amount of user fee. With the exception of this adjustment, or unless required by a Customs audit, no other adjustment or reconciliation in connection with user fee payments shall be required of the importer.

Fourth, the amendment adds clarifying language regarding the customs user fees. In the Budget Reconciliation Act of 1986, Congress required that the fees were to be placed in a dedicated account for expenditures for commercial operations of the Customs Service. The new language specifies that the fees are to be treated as receipts offsetting expenditures of salaries and expenses for commercial operations. The purpose is to make clear that it is inappropriate to treat the fees as revenues, as the Administration has done. In addition, the section clarifies that the user fees on passengers and conveyances are to be deposited in the same dedicated account as the ad valorem fees and, to the extent they are not needed to reimburse the Customs Service for expenses incurred in providing overtime inspectional services, they are to be used as receipts offsetting commercial operations expenditures.

K. COLLECTION OF NONTAX DEBTS OWED TO FEDERAL AGENCIES

3-Year Extension (sec. 4601 of the bill, sec. 6402 of the Code, and sec. 3720A of title 31, United States Code)

Present Law

Certain Federal agencies are authorized to notify the IRS that a person owes a past due, legally enforceable debt to the agency. The IRS then must reduce the amount of any tax refund due the person by the amount of the debt and pay that amount to the agency. This program expires after December 31, 1987.

Before a refund can be offset under this program, the agency which is owed a debt must certify to the Treasury that the debtor has been notified about the proposed offset and has been given at least 60 days to present evidence that all or part of the debt is not past due or not legally enforceable. If a refund otherwise due an individual is subject to offset both under this provision and because of AFDC past-due support, the offset for AFDC past-due support is implemented first.

Under IRS regulations, the program only affects refunds due individuals, not corporations.

Reasons for Change

A 3-year extension of the debt collection provisions is believed to be appropriate so that the Federal Government can use every means available to collect debts owed to Federal agencies that the agencies have been unable to collect themselves. It is not believed to be appropriate to permit existing debt collection provisions to expire at a time when additional revenues are needed to reduce the budget deficit. Moreover, expanding the debt collection program to apply to debts owed to all Federal agencies by individuals or corporations should enhance the effectiveness of the program.

Concern was also expressed, however, about the possible negative effect of this program on voluntary tax compliance. Therefore, the provision is extended for 3 years, which would provide the Congress with an additional opportunity to assess the effect of the program on voluntary tax compliance. Also, GAO is required to report on the impact of this program on voluntary tax compliance. This report will be an important element in assessing the effectiveness of the program.

Explanation of Provision

The amendment extends for 3 years the tax refund offset program. In addition, the amendment expands the scope of the program in two ways. First it applies to debts owed to all (not just selected) Federal agencies. Second, it applies to debts owed by either individuals or corporations.

Prior to the enactment of this amendment, some Federal agencies may take actions to notify a debtor of a proposed offset and to certify to the Treasury that a debt is owed, as required by section 3720A of title 31, United States Code. It is intended that these agency actions not be affected by the fact that they were taken before Congress enacted this 3-year extension of the Federal debt collection program.

Prior to the expiration date of December 31, 1990, this provision should be evaluated to determine the extent to which it facilitates the collection of debts owed the Federal Government and increases the amount of debts collected, as well as to examine the effects of this provision on voluntary taxpayer compliance with the income tax law. Therefore, GAO, in consultation with the Secretary of the Treasury, is required to report to the Congress on the effects of this program on voluntary tax compliance. This report is to provide and analyze data on the effects of the program, such as whether taxpayers whose refunds are offset continue to file tax returns and whether those taxpayers adjust their withholding so as to create additional tax collection difficulties.

Effective Date

The provision is effective on January 1, 1988, and expires after December 31, 1990. The report is due on April 1, 1989.

L. ESTATE TAX DEDUCTION FOR SALES TO AN ESOP

(Secs. 4611-4613 of the bill, sec. 1172 of the Reform Act, and secs. 409 and 2057 of the Code)

Present Law

In general

The Tax Reform Act of 1986 (sec. 1172 of the Act and sec. 2057 of the Code) adopted a special provision allowing partial relief from estate taxes through an estate tax deduction for sales of employer securities to an employee stock ownership plan (ESOP) or an eligible worker-owned cooperative. This provision was adopted for a temporary period of time to encourage transfers of employer securities to ESOPs. The provision permits a deduction from the gross estate of a decedent equal to 50 percent of the proceeds received from a qualified sale of employer securities. Under the Act, a qualified sale is any sale of employer securities by the executor of an estate to an ESOP or an eligible worker-owned cooperative.

IRS Notice

IRS Notice 87-13 (January 5, 1987) provided that the estate tax deduction for transfers to an ESOP or worker-owned cooperative is not available unless (1) the decedent directly owned the employer securities immediately before death, and (2) after the sale, the employer securities are allocated to plan participants or are held for future allocation in connection with an exempt loan under section 4975 or in connection with a transfer of assets from a defined benefit plan under the rules of section 4980(c)(3). Except in the case of a bona fide business transaction, employer securities are not treated as allocated or held for future allocation to the extent that such securities are allocated or held for future allocation in substitution of other employer securities that had been allocated or held for future allocation.

Reasons for Change

In enacting the estate tax deduction, Congress intended that it would be utilized in a limited number of transactions with a relatively modest revenue loss. As drafted, the estate tax deduction was significantly broader than what was originally contemplated by Congress in enacting the provision. It is necessary to conform the statute to the original intent of Congress in order to prevent a significant revenue loss under the Tax Reform Act of 1986.

While Congress intended to encourage transfers of employer securities to ESOPs by providing for partial elimination of estate tax liability, it was not intended that estates be able to eliminate all estate tax liability through use of the deduction or that the securities acquired in a transaction for which the deduction was claimed need not be allocated to plan participants. The provision would not have been adopted in its present form had the full extent of the revenue impact and effect of the provision been recognized.

It is now necessary to modify the provision to bring the revenue loss in line with the original estimate and Congressional intent. The modifications contained in the amendment (which are essentially identical to modifications proposed in S. 591, introduced by Senator Bentsen) are designed to achieve this result while maintaining to the fullest extent possible the incentive to transfer employer securities to ESOPs.

The primary thrust of the amendment is to conform the provision to the original intent of Congress in enacting the deduction. In this respect, the amendment has two elements.

First, the amendment makes clear that the positions taken by the Internal Revenue Service in Notice 87-13 with respect to the estate tax deduction are an accurate statement of Congressional intent in enacting the provision. If these clarifications are not made, taxpayers could qualify for the deduction by engaging in essentially sham transactions.

Second, the amendment makes additional changes in the deduction which more fully effectuate the intent of Congress to provide limited relief from the estate tax. These changes will give taxpayers and the Internal Revenue Service more administrable guidance as to the requirements that must be satisfied by the decedent and the ESOP and the consequences of failing to satisfy these requirements.

Explanation of Provisions

Confirmation of IRS Notice

The amendment confirms the positions taken in IRS Notice 87-13.

Tax-credit ESOPs

The amendment clarifies that the estate tax deduction is available in the case of sales of employer securities to tax-credit ESOPs (sec. 409(a)).

Nonpublicly traded stock

The amendment limits the deduction to sales of employer securities which are issued by a domestic corporation that has no stock outstanding that is readily tradable on an established securities market.

Estate requirements

Sale by executor.—As enacted, section 2057 would have applied only with respect to sales by the executor of an estate. There are significant issues and potential inconsistencies created by this language. For example, it is common for individuals to structure their estates so that not all the assets are included in the probate estate and subject to the control of the executor. Assets may be in a revocable trust or other similar arrangement which is excluded from the probate estate. In the case of assets held in trust, the statute could be interpreted to preclude the sale of such assets in a transaction qualifying for the estate tax deduction because the executor cannot sell the trust assets.

Congress, in enacting the estate tax deduction, did not intend to draw arbitrary distinctions among the types of assets includible in the gross estate of a decedent depending upon whether the assets are within the control of the executor.

The amendment clarifies that the provision applies to sales of employer securities to the extent the securities are includible in the gross estate. Thus, assets held in trust are eligible for the estate tax deduction to the extent the employer securities held by the trust are listed as securities on the estate tax return. On the other hand, if a decedent owned a partnership interest, the value of the partnership interest is reported on the estate tax return and not the value of the underlying assets of the partnership. Consequently, under the provision, if the assets of a partnership consisted of employer securities, such securities may not be sold in a transaction qualifying for the estate tax deduction.

Limitation on deduction.—In order to ensure that the provision results in only a partial elimination of estate tax liability, the amendment limits the amount of the deduction allowable under section 2057 to 50 percent of the taxable estate (determined without regard to sec. 2057). Also, the amount of estate taxes imposed by section 2001 (determined without regard to any credits allowable against the tax) may not be reduced by more than $750,000 by reason of the deduction.

Holding period requirement.—In order to prevent transfers in contemplation of death, the amendment imposes a holding period requirement for the decedent with respect to the employer securities to be sold to an ESOP. Thus, in order for the estate tax deduction to be available, the securities are required to be assets that would be includible in the gross estate of the decedent if the decedent died at any time during the shorter of (1) the 5-year period ending on the date of death, or (2) the period beginning on October 22, 1986, and ending on the date of death. For purposes of determining whether the holding period requirement has been satisfied, securities which would be includible in the gross estate of the spouse of the decedent if the spouse died during the holding period are to be treated as securities includible in the gross estate of the decedent during such period. In the case of the estate of a decedent who died before October 22, 1986, the holding period requirement is satisfied if the decedent held the employer securities on the date of death.

The period for which the decedent is considered to have held the stock is reduced for any period for which the holding period is reduced under section 246(c)(4) (relating to periods in which the risk of loss is diminished).

Assets transferred from other plans.—The amendment provides that the estate tax deduction does not apply to the extent that the employer securities are acquired with transferred assets. Transferred assets are assets of an ESOP which are attributable to assets held by another qualified plan maintained by the employer (other than another ESOP) or assets attributable to a period of time when a plan was not an ESOP. Assets held by the ESOP on February 27, 1987, are not transferred assets, regardless of their source. The denial of the deduction extends to assets that are transferred directly from one plan to another (for example, pursuant to section 4980(c)(3)), assets which are rolled over from another plan, assets which result from a conversion of another plan into an ESOP, and assets which are merged into an ESOP from another plan (other than an ESOP). The Secretary has the authority to except assets from this provision under appropriate circumstances.

In order to prevent the employer from acquiring securities in a section 2057 transaction with the proceeds of a loan and then using transferred assets to make payments on the loan, the amendment imposes an excise tax if a loan payment is made with transferred assets. The tax is imposed on the employer maintaining the ESOP and is equal to 30 percent of the amount paid on the loan (including both principal and interest payments). This provision is not intended to expand the permissible sources from which exempt loans can be repaid pursuant to section 4975.

ESOP allocation requirements and substitution prohibition

In general.—The amendment modifies the allocation requirement and nonsubstitution requirement in present law (as reflected in the IRS Notice) in several respects. The modifications provide objective rules for determining when a prohibited substitution of employer securities occurs and also change the sanctions for failing to allocate the securities acquired in the section 2057 transaction or acquiring securities in substitution for other employer securities. The new provisions are intended to ensure that plan participants receive the employer securities acquired in a section 2057 transaction (or the proceeds of a disposition thereof) and that the transaction results in an increase in employer securities in the plan.

Dispositions within 1 year preceding sale.—The amendment prohibits an ESOP from selling employer securities and using the proceeds to acquire substitute employer securities in a section 2057 transaction. Further, the amendment modifies this nonsubstitution rule contained in present law (as reflected in the IRS Notice) to provide that the deduction is available with respect to proceeds from a sale to an ESOP only to the extent the proceeds are greater than the excess (if any) of (1) the proceeds from the disposition of employer securities during the 1-year period preceding the sale, over (2) the cost of employer securities purchased by the plan during such 1-year period. In addition, for purposes of the rule, all ESOPs of the employer are treated as a single plan.

In determining the proceeds of the plan from dispositions of employer securities, the following dispositions are not taken into account: (1) distributions made on account of the death or disability of the employee, the retirement of the employee after the attainment of age 59-1/2, or a separation from service of the employee which results in a 1-year break in service; (2) certain exchanges of qualified employer securities for other employer securities in a corporate reorganization; and (3) dispositions required to meet diversification requirements (section 401(a)(28)).

This provision can be illustrated by the following example: On July 1, 1988, executor E sells employer securities to an ESOP. The proceeds of the sale are $150,000. During the 1-year period from

July 2, 1987, through July 1, 1988, the cost of employer securities acquired by the plan and all other ESOPs maintained by the employer (excluding the purchase from executor E) is $350,000. The proceeds of the ESOP (and all other ESOPs maintained by the employer) from the disposition of employer securities during the same period (excluding any dispositions excepted from the provision) is $400,000. The estate tax deduction is not available with respect to $50,000 of the proceeds received by executor E and is available with respect to $100,000.

Dispositions within 3 years following sale.—To preclude an ESOP from disposing of qualified securities within 3 years of the date of a sale qualifying for the estate tax deduction, an excise tax is imposed on the employer maintaining the ESOP. The tax is equal to 30 percent of the amount realized on the disposition. No penalty tax is imposed on dispositions which are excepted from the provision prohibiting dispositions within the one-year period preceding the sale. The amendment contains ordering rules for determining which securities are considered disposed of in any disposition.

The 30-percent excise tax does not apply to dispositions of securities with respect to which the estate tax deduction is denied due to a failure to meet the nonsubstitution requirement.

Failure to allocate.—The amendment imposes an excise tax on the employer maintaining the ESOP in the event of a failure to allocate securities acquired in a section 2057 transaction. The tax is equal to 30 percent of the amount realized on the disposition of qualified employer securities before the securities are allocated to the accounts of plan participants if the proceeds from such disposition are not so allocated. This excise tax is coordinated with the tax on distributions within 3 years following the sale, so that this tax does not apply to dispositions to which the premature disposition tax applies.

The tax applies in a number of situations to which the tax on premature dispositions does not apply. For example, the tax applies if the shares were disposed of after expiration of the 3-year period in order to repay an exempt loan.

Taken together with the 3-year rule, this provision requires that, within the 3-year holding period, employer securities are to be allocated to plan participants or held for allocation. After expiration of the 3-year holding period, the securities may be sold, but the entire proceeds of the sale (including any amounts owing on an exempt loan) are to be allocated to plan participants.

The 30-percent excise tax does not apply to dispositions of securities with respect to which the estate tax deduction is denied due to a failure to meet the nonsubstitution requirement.

Effective Dates

Confirmation of IRS Notice

Because this provision of the amendment accurately reflects Congressional intent in enacting the estate tax deduction, it is effective as if included in the Tax Reform Act of 1986.

Tax-credit ESOPs

This provision is effective as if included in the Tax Reform Act of 1986.

Nonpublicly traded stock

This provision is effective with respect to sales after February 27, 1987.

Estate requirements

Sale by executor.—This provision is effective as if included in the Tax Reform Act of 1986.

Limitation on deduction.—This provision is effective with respect to sales of employer securities to an ESOP after February 27, 1987. Sales on or before February 27, 1987, are not subject to the limitations in the provision, but are taken into account in determining whether the limitations are met with respect to post-effective date sales.

Holding period requirement.—This requirement is effective with respect to sales to an ESOP after February 27, 1987.

Assets transferred from other plans.—This provision is effective with respect to sales to an ESOP after February 27, 1987, and, in the case of transfers used to make payments on a loan, transfers used after February 27, 1987.

ESOP allocation requirements and substitution prohibition

Dispositions within 1 year preceding sale.—This provision is effective with respect to sales to an ESOP after February 27, 1987.

Dispositions within 3 years following sale.—This provision is effective with respect to dispositions of qualified securities by the ESOP after February 27, 1987. The 30-percent excise tax does not apply to dispositions of securities with respect to which the estate tax deduction is denied due to a failure to meet the nonsubstitution requirement.

Failure to allocate.—This provision is effective with respect to failures to allocate employer securities occurring after February 27, 1987.

ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS

Provisions Approved by the Senate Finance Committee, Fiscal Years 1988–90

[In millions of Dollars]

Item	1988	1989	1990
I. Revenue Provisions:			
A. Accounting Provisions:			
1. Repeal vacation pay reserve	396	1,983	2,038
2. Repeal installment method for dealers	2,043	2,964	2,143
3. Require capitalization of pension past service liability	70	110	120
4. Repeal cash method of accounting for farms with receipts over $25 million	24	36	38
B. Estimated Taxes Provisions	1,580	779	371
C. Corporate Tax Provisions:			
1. Modify computation of earnings and profits for intercorporate dividends and basis adjustments (overrule Woods Investment Company case) (Includes binding contract rule.)	94	328	450
2. Denial of graduated rates for personal service corporations	75	125	140
D. Partnership Provisions: Portfolio income	77	127	170
E. Child and Dependent Care Credit: Deny credit for overnight camp expenses	11	106	112
F. Modify Pension Funding Rules [1]	679	1,502	992
G. Estate and Gift Taxes: 2-year freeze of 1987 rates	21	176	165
H. Excise Taxes:			
1. Telephone tax: 3-year extension	1,324	2,266	2,472
2. Collect diesel fuel and special motor fuels taxes on sales to retailer	208	230	200
3. Extend termination date for coal excise tax			
I. Employment Taxes:			
1. FICA tax provisions:			
a. Expand employer share of FICA tax to include all cash tips	184	281	302
b. and c. Expand FICA tax to inactive duty reservists, certain agricultural employees, family members, and group-term life insurance includible in wages	200	261	278
2. Railroad retirement taxes	144	182	183
3. FUTA tax: 3-year extension	715	1,009	1,033
J. ESOP Estate Tax Deduction	1,226	1,553	1,862
Subtotal, Revenue Provisions	**9,071**	**14,018**	**13,069**
II. User Fees:			
A. Internal Revenue Service Fees	46	60	60
B. Extensions and Increases in Certain Alcohol, Tobacco, and Firearms Occupational Taxes	167	106	106
C. Customs Service Fee	122	152	591
Subtotal, User Fees	**335**	**318**	**757**

Provisions Approved by the Senate Finance Committee, Fiscal Years 1988-90—Continued

[In millions of Dollars]

Item	1988	1989	1990
III. Outlay Reduction:			
A. Debt Collection: 3-year extension	300	425	425
B. PBGC Premiums Increase	390	510	540
Subtotal, Outlay Reduction	**690**	**935**	**965**
Grand Total, Deficit Reduction	**10,096**	**15,271**	**14,791**

[1] Includes provisions to modify full-funding limitation and effects of Finance PBGC-related provisions to modify funding rules.

Subtitle B—Revenue Provisions

SEC. 4500. SHORT TITLE; AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986; TABLE OF CONTENTS.

(a) Short Title.—This subtitle may be cited as the "Revenue Amendments of 1987".

(b) Amendment to the Internal Revenue Code of 1986.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) Table of Contents.—

Subtitle B—Revenue Provisions

Sec. 4500. Short title; amendment to Internal Revenue Code of 1986; table of contents.

Part I—Accounting Provisions

Sec. 4501. Repeal of reserve for accrual of vacation pay.
Sec. 4502. Repeal of installment method for dealers in property.
Sec. 4503. Amortization of past service pension costs.
Sec. 4504. Certain farm corporations required to use accrual method of accounting.

Part II—Estimated Tax Provisions

Sec. 4511. Revision of corporate estimated tax provisions.
Sec. 4512. Revised withholding certificates required to be put into effect more promptly.
Sec. 4513. Estimated tax penalties for 1987.

Part III—Corporate Provisions

Sec. 4521. Certain earnings and profits adjustments not to apply for certain purposes.
Sec. 4522. Benefits of graduated corporate rates not allowed to personal service corporations.

Part IV—Partnership Provision

Sec. 4531. Treatment of publicly traded partnerships under section 469.

PART V—INCOME TAX PROVISION

Sec. 4541. Expenses of overnight camps not allowable for dependent care credit.

PART VI—PENSION PROVISIONS

SUBPART A—FULL-FUNDING LIMITATIONS

Sec. 4550. Full-funding limitation for deductions to qualified plans.

SUBPART B—PENSION FUNDING REQUIREMENTS

Sec. 4551. Definitions.

Chapter 1—Modifications of Minimum Funding Standard

Sec. 4552. Additional funding requirements.
Sec. 4553. Time for making contributions.
Sec. 4554. Liability of members of controlled group for taxes on failure to meet minimum funding standards.
Sec. 4555. Funding waivers.
Sec. 4556. Other funding changes.

Chapter 2—Treatment of Plan Terminations

Sec. 4557. Standard termination procedures available only when assets sufficient to meet termination liability.
Sec. 4558. Distress terminations.
Sec. 4559. Imposition of lien where significant unfunded current liability.

Chapter 3—Increase in Premium Rates

Sec. 4560. Increase in premium rates.

PART VII—ESTATE AND GIFT TAXES

Sec. 4561. Retention of 1987 rates for 2 years.

PART VIII—EXCISE TAXES

Sec. 4571. Extension of telephone excise tax.
Sec. 4572. Diesel fuel and special motor fuels taxes imposed on sale to retailers.
Sec. 4573. Extension of temporary increase in amount of tax imposed on coal producers.

PART IX—EMPLOYMENT TAXES

Sec. 4581. Increase in rates of tier 2 railroad retirement tax on employees for 1988 and thereafter.
Sec. 4582. Increase in rates of tier 2 railroad retirement tax on employers for 1988 and thereafter.
Sec. 4583. Commission on Railroad Retirement Reform.
Sec. 4584. Transfer to railroad retirement account.
Sec. 4585. Extension of FUTA Repayment tax.
Sec. 4586. Transfer of funds into the Federal unemployment account and the extended unemployment compensation account.
Sec. 4587. Application of employer taxes to employees' cash tips.
Sec. 4588. Coverage of inactive duty military training.
Sec. 4589. Coverage of all cash pay of agricultural employees whose employers spend $2,500 or more a year for agricultural labor.
Sec. 4590. Coverage of the employer cost of group-term life insurance.
Sec. 4591. Coverage of services performed by one spouse in the employ of the other.
Sec. 4592. Treatment of service performed by an individual in the employ of a parent.

PART X—USER FEES

Sec. 4595. Fees for requests for ruling, determination, and similar letters.
Sec. 4596. Occupational taxes relating to alcohol, tobacco, and firearms.
Sec. 4597. Customs user fees.

PART XI—DEBT COLLECTION

Sec. 4601. 3-year extension of provisions relating to collection of non-tax debts owed to Federal agencies.

PART XII—ESTATE TAX PROVISIONS RELATING TO EMPLOYEE STOCK OWNERSHIP

Sec. 4611. Congressional clarification of estate tax deduction for sales of employer securities.
Sec. 4612. Modifications of estate tax deduction for sale of employer securities.
Sec. 4613. Excise taxes on plans or cooperatives disposing of employer securities for which estate tax deduction was allowed.

PART I—ACCOUNTING PROVISIONS

SEC. 4501. REPEAL OF RESERVE FOR ACCRUAL OF VACATION PAY.

(a) GENERAL RULE.—Section 463 (relating to accrual of vacation pay) is hereby repealed.

(b) TECHNICAL AMENDMENTS.—

(1) Section 81 is hereby repealed.

(2) Subparagraph (B) of section 404(b)(2) is amended to read as follows:

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e))."

(3) Paragraph (2) of section 419(e) is amended by inserting "or" at the end of subparagraph (B), by striking out ", or" at the end of subparagraph (C), and inserting in lieu thereof a period, and by striking out subparagraph (D).

(4) Paragraph (5) of section 461(h) is amended to read as follows:

"(5) SUBSECTION NOT TO APPLY TO CERTAIN ITEMS.—This subsection shall not apply to any item for which a deduction is allowable under a provision of this title which specifically provides for a deduction for a reserve for estimated expenses."

(5) The table of sections for part II of subchapter B of chapter 1 is amended by striking out the item relating to section 81.

(6) The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 463.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who elected to have section 463 of the Internal Revenue Code of 1986 apply for such taxpayer's last taxable year beginning before January 1, 1988, and who is required to change his method of accounting by reason of the amendments made by this section—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary, and

(C) the net amount of adjustments required by section 481 of such Code to be taken into account by the taxpayer—

(i) shall be reduced by the balance in the suspense account under section 463(c) of such Code as of the close of such last taxable year, and

(ii) shall be taken into account over the 4-taxable year period beginning with the taxable year following such last taxable year as follows:

In the case of the:	The percentage taken into account is:
1st year	10
2nd year	50
3rd year	15
4th year	25.

"Notwithstanding subparagraph (C)(ii), if the period the adjustments are required to be taken into account under section 481 of such Code is less than 4 years, such adjustments shall be taken into account ratably over such shorter period.

SEC. 4502. REPEAL OF INSTALLMENT METHOD FOR DEALERS IN PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 453(b)(2) (relating to exemptions from installment sales) is amended to read as follows:

"(A) DEALER DISPOSITIONS.—Any dealer disposition (as defined in section 453A)."

(b) DEALER DISPOSITION DEFINED.—Section 453A (relating to installment method for dealers in personal property) is amended to read as follows:

"SEC. 453A. DEALER DISPOSITIONS.

"(a) IN GENERAL.—For purposes of section 453(b)(2)(A), the term 'dealer disposition' means any of the following dispositions:

"(1) PERSONAL PROPERTY.—Any disposition of personal property by a person who regularly sells or otherwise disposes of personal property on the installment plan.

"(2) REAL PROPERTY.—Any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

"(b) EXCEPTIONS.—The term 'dealer disposition' does not include—

"(1) FARM PROPERTY.—The disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e) (4) or (5)).

"(2) TIMESHARES AND RESIDENTIAL LOTS.—Dispositions on the installment plan described in section 453C(e)(4)(A)(i) (relating to timeshares and residential lots) if the taxpayer elects to have subparagraphs (B) and (C) of section 453C(e)(4) apply to any installment obligations which arise from such dispositions. An election under this paragraph shall not apply with respect to an installment obligation which is guaranteed by any person other than an individual.

Any carrying charges or interest with respect to a disposition described in paragraph (1) or (2) shall be included in the total contract price of the property (and added on the books of account of the seller to the established cash selling price of such property) and, if such charges or interest are not so included, any payments received shall be treated as applying first against such carrying charges or interest."

(c) CONFORMING AMENDMENTS.—

(1) Sections 381(c)(8) and 691(a) (4) and (5) are each amended by striking out "or 453A" each place it appears.

(2) Section 56(a)(6)(B) is amended by inserting "an" before "applicable".

(3) Section 56(a)(6) is amended by striking out "or 453A".

(4) Sections 453C(a) and (c)(1) are each amended by striking out "and 453A".

(5) Section 453C(b) is amended—

(A) by striking out "average quarterly indebtedness for" in paragraph (1)(A) and inserting in lieu thereof "indebtedness as of the close of",

(B) by striking out "average quarterly" in paragraph (3)(B), and

(C) by striking out paragraph (4).

(6) Clause (i) of section 453C(e)(1)(A) is amended to read as follows:

"(i) which arises from the disposition after August 16, 1986, of real property under the installment method which is property used in the taxpayer's trade or business or property held for the production of rental income, but only if the sales price of such property exceeds $150,000 (determined after application of the rule under the last sentence of section 1274(c)(3)(A)(ii)), and".

(7) Section 453C(e)(5)(C) is amended by striking out "subsection (b)(4) shall not apply" and inserting in lieu thereof "subsection (b) shall be applied by taking into account average quarterly indebtedness"

(8) The table of sections for subpart B of part II of subchapter B of chapter 1 is amended by striking out the item relating to section 453A and inserting in lieu thereof the following new item:

"Sec. 453A. Dealer dispositions."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to installment obligations arising from dispositions after December 31, 1987.

(2) SPECIAL RULES FOR OBLIGATIONS ARISING FROM DISPOSITIONS AFTER FEBRUARY 28, 1986, AND BEFORE JANUARY 1, 1988.—

(A) IN GENERAL.—In the case of an applicable installment obligation arising from a disposition described in subclause (I) or (II) of section 453C(e)(1)(A)(i) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) before January 1, 1988, the amendments made by this section shall apply to taxable years beginning after December 31, 1987.

(B) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by subparagraph (A) to change its method of accounting for any taxable year with respect to obligations described in subparagraph (A)—

(i) such change shall be treated as initiated by the taxpayer,

(ii) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

(iii) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

(3) COORDINATION WITH TAX REFORM ACT OF 1986.—The amendments made by this section shall not apply to any installment obligation or to any taxpayer during any period to the extent the amendments made by section 811 of the Tax Reform Act of 1986 do not apply to such obligation or during such period.

SEC. 4503. AMORTIZATION OF PAST SERVICE PENSION COSTS.

(a) IN GENERAL.—For purposes of section 263A of the Internal Revenue Code of 1986 (relating to inventory costs capitalization), the allocable costs (within the meaning of section 263A(a)(2) of such Code) with respect to any property shall include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subsection (a) shall apply to taxable years beginning after December 31, 1987.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

SEC. 4504. CERTAIN FARM CORPORATIONS REQUIRED TO USE ACCRUAL METHOD OF ACCOUNTING.

(a) GENERAL RULE.—Section 447 (relating to method of accounting for corporations engaged in farming) is amended by striking out subsections (c) and (e), by redesignating subsection (d) as subsection (e), and by inserting after subsection (b) the following new subsections:

"(c) EXCEPTION FOR CERTAIN CORPORATIONS.—For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

"(1) an S corporation, or

"(2) a corporation the gross receipts of which meet the requirements of subsection (d).

"(d) GROSS RECEIPTS REQUIREMENTS.—

"(1) IN GENERAL.—A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of the same controlled group of corporations (within the meaning of section 1563(a)) shall be treated as 1 corporation.

"(2) Special rules for family corporations.—

"(A) In general.—In the case of a family corporation, paragraph (1) shall be applied—

"(i) by substituting 'December 31, 1985,' for 'December 31, 1975,'; and

"(ii) by substituting '$25,000,000' for '$1,000,000'.

"(B) Gross receipts test.—

"(i) Controlled groups.—Notwithstanding the last sentence of paragraph (1), in the case of a family corporation—

"(I) except as provided by the Secretary, only the applicable percentage of gross receipts of any other member of any controlled group of corporations of which such corporation is a member shall be taken into account, and

"(II) under regulations, gross receipts of such corporation or of another member of such group shall not be taken into account by such corporation more than once.

"(ii) Pass-thru entities.—For purposes of paragraph (1), if a family corporation holds directly or indirectly any interest in a partnership, estate, trust or other pass-thru entity, such corporation shall take into account its proportionate share of the gross receipts of such entity.

"(iii) Applicable percentage.—For purposes of clause (i), the term 'applicable percentage' means the percentage equal to a fraction—

"(I) the numerator of which is the fair market value of the stock of another corporation held directly or indirectly as of the close of the taxable year by the family corporation, and

"(II) the denominator of which is the fair market value of all stock of such corporation as of such time.

For purposes of this clause, the term 'stock' does not include stock described in section 1563(c)(1)."

"(C) Family corporation.—For purposes of this section, the term 'family corporation' means—

"(i) any corporation if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of all other classes of stock of the corporation, are owned by members of the same family, and

"(ii) any corporation described in subsection (h)."

(b) Suspense Account in Lieu of 481 Adjustments.—Section 447 is amended by adding at the end thereof the following new subsection:

"(i) Suspense Account for Family Corporations.—

"(1) In general.—If any family corporation is required by this section to change its method of accounting for any taxable year (hereinafter in this subsection referred to as the 'year of the change'), notwithstanding subsection (f), such corporation shall establish a suspense account under this subsection in lieu of taking into account adjustments under section 481(a) with respect to amounts included in the suspense account.

"(2) INITIAL OPENING BALANCE.—The initial opening balance of the account described in paragraph (1) shall be the lesser of—

"(A) the net adjustments which would have been required to be taken into account under section 481 but for this subsection, or

"(B) the amount of such net adjustments determined as of the close of the 2nd taxable year preceding the year of change.

If the amount referred to in subparagraph (A) exceeds the amount referred to in subparagraph (B), notwithstanding paragraph (1), such excess shall be taken into account under section 481 in the year of the change.

"(3) REDUCTION IN ACCOUNT IF FARMING BUSINESS CONTRACTS.—If—

"(A) the gross receipts of the corporation from the trade or business of farming for the year of the change or any subsequent taxable year, is less than

"(B) such gross receipts for the taxpayer's last taxable year beginning before the year of the change (or for the most recent taxable year for which a reduction in the suspense account was made under this paragraph),

the amount in the suspense account (after taking into account prior reductions) shall be reduced by the percentage by which the amount described in subparagraph (A) is less than the amount described in subparagraph (B).

"(4) INCOME INCLUSION.—Any reduction in the suspense account under paragraph (3) shall be included in gross income.

"(5) INCLUSION WHERE CORPORATION CEASES TO BE A FAMILY CORPORATION.—If the corporation ceases to be a family corporation during any taxable year, the amount in the suspense account (after taking into account prior reductions) shall be included in gross income for such taxable year.

"(6) SUBCHAPTER C TRANSACTIONS.—The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party by reason of subchapter C shall be determined under regulations prescribed by the Secretary."

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (e) of section 447 (as redesignated by subsection (a)) is amended by striking out "subsection (c)(2)" and inserting in lieu thereof "subsection (d)".

(2) Paragraph (1) of section 447(h) is amended—

(A) by striking out "This section shall not apply to any corporation" and inserting in lieu thereof "A corporation is described in this subsection",

(B) by striking out "subsection (d)" each place it appears and inserting in lieu thereof "subsection (e)", and

(C) by striking out "subsection (d)(1)" each place it appears and inserting in lieu thereof "subsection (e)(1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

PART II—ESTIMATED TAX PROVISIONS

SEC. 1511. REVISION OF CORPORATE ESTIMATED TAX PROVISIONS.

(a) GENERAL RULE.—Section 6655 (relating to failure by corporation to pay estimated income tax) is amended to read as follows:

"SEC. 6655. FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

"(a) ADDITION TO TAX.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under chapter 1 for the taxable year an amount determined by applying—

"(1) the underpayment rate established under section 6621,

"(2) to the amount of the underpayment,

"(3) for the period of the underpayment.

"(b) AMOUNT OF UNDERPAYMENT; PERIOD OF UNDERPAYMENT.—For purposes of subsection (a)—

"(1) AMOUNT.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment paid on or before the due date for the installment.

"(2) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

"(A) the 15th day of the 3rd month following the close of the taxable year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is paid.

"(3) ORDER OF CREDITING PAYMENTS.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(c) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this section—

"(1) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each taxable year.

"(2) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	The due date is:
1st	April 15
2nd	June 15
3rd	September 15
4th	December 15

"(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

"(1) AMOUNT.—

"(A) IN GENERAL.—Except as otherwise provided in this section, the amount of any required installment shall be 25 percent of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—Except as otherwise provided in this subsection, the term 'required annual payment' means the lesser of—

"(i) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

"(ii) 100 percent of the tax shown on the return of the corporation for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months, or the corporation did not file a return for such preceding taxable year showing a liability for tax.

"(2) LARGE CORPORATIONS REQUIRED TO PAY 90 PERCENT OF CURRENT YEAR TAX.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), clause (ii) of paragraph (1)(B) shall not apply in the case of a large corporation.

"(B) MAY USE LAST YEAR'S TAX FOR 1ST INSTALLMENT.—Subparagraph (A) shall not apply for purposes of determining the amount of the 1st required installment for any taxable year. Any reduction in such 1st installment by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction.

"(C) SPECIAL RULE FOR TAXABLE YEARS BEGINNING IN 1988.—Subparagraph (A) shall not apply for purposes of determining the amount of the 1st and 2nd required installments for any taxable year beginning in 1988. Any reduction in such installments by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction.

"(e) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT OR ADJUSTED SEASONAL INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER SUBSECTION (d).—

"(1) IN GENERAL.—In the case of any required installment, if the corporation establishes that the annualized income installment or the adjusted seasonal installment is less than the amount determined under section (d)(1) (as modified by subsection (d)(2))—

"(A) the amount of such required installment shall be the annualized income installment (or, if lesser, the adjusted seasonal installment), and

"(B) any reduction in a required installment resulting from the application of this paragraph shall be recaptured by increasing the amount of the next required installment determined under subsection (d)(1) (as so modified) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subparagraph).

"(2) DETERMINATION OF ANNUALIZED INCOME INSTALLMENT.—

"(A) IN GENERAL.—In the case of any required installment, the annualized income installment is the excess (if any) of—

"(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and modified alternative minimum taxable income—

"(I) for the first 3 months of the taxable year, in the case of the 1st required installment,

"(II) for the first 3 months or for the first 5 months of the taxable year, in the case of the 2nd required installment,

"(III) for the first 6 months or for the first 8 months of the taxable year in the case of the 3rd required installment, and

"(IV) for the first 9 months or for the first 11 months of the taxable year, in the case of the 4th required installment, over

"(ii) the aggregate amount of any prior required installments for the taxable year.

"(B) SPECIAL RULES.—For purposes of this paragraph—

"(i) ANNUALIZATION.—The taxable income, alternative minimum taxable income, and modified alternative minimum taxable income shall be placed on an annualized basis under regulations prescribed by the Secretary.

"(ii) APPLICABLE PERCENTAGE.—

"in the case of the following required installments:	The applicable percentage is:
1st	22.5
2nd	45
3rd	67.5
4th	90

"(iii) MODIFIED ALTERNATIVE MINIMUM TAXABLE INCOME.—The term 'modified alternative minimum taxable income' has the meaning given to such term by section 59A(b).

"(3) DETERMINATION OF ADJUSTED SEASONAL INSTALLMENT.—

"(A) IN GENERAL.—In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of—

"(i) 90 percent of the amount determined under subparagraph (C), over

"(ii) the aggregate amount of all prior required installments for the taxable year.

"(B) LIMITATION ON APPLICATION OF PARAGRAPH.—This paragraph shall apply only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70 percent.

"(C) DETERMINATION OF AMOUNT.—The amount determined under this subparagraph for any installment shall be determined in the following manner—

"(i) take the taxable income for all months during the taxable year preceding the filing month,

"(ii) divided such amount by the base period percentage for all months during the taxable year preceding the filing month,

"(iii) determine the tax on the amount determined under clause (ii), and

"(iv) multiply the tax computed under clause (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

"(D) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) BASE PERIOD PERCENTAGE.—The base period percentage for any period of months shall be the average percent which the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income for the 3 preceding taxable years.

"(ii) FILING MONTH.—The term 'filing month' means the month in which the installment is required to be paid.

"(iii) REORGANIZATION, ECT.—The Secretary may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

"(f) EXCEPTION WHERE TAX IS SMALL AMOUNT.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $500.

"(g) DEFINITIONS AND SPECIAL RULES.—

"(1) TAX.—For purposes of this section, the term 'tax' means the excess of—

"(A) the sum of—

"(i) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever applies,

"(ii) the tax imposed by section 55,

"(iii) the tax imposed by section 59A, plus

"(iv) the tax imposed by section 887, over

"(B) the sum of—

"(i) the credits against tax provided by part IV of subchapter A of chapter 1, plus

"(ii) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

For purposes of the preceding sentence, in the case of a foreign corporation subject to taxation under section 11 or 1201(a), or under subchapter L of chapter 1, the tax imposed by section 881 shall be treated as a tax imposed by section 11.

"(2) LARGE CORPORATION.—

"(A) IN GENERAL.—For purposes of this section, the term 'large corporation' means any corporation if such corporation (or any predecessor corporation) had taxable income of $1,000,000 or more for any taxable year during the testing period.

"(B) Rules for applying subparagraph (A).—

"(i) Testing period.—For purposes of subparagraph (A), the term 'testing period' means the 3 taxable years immediately preceding the taxable year involved.

"(ii) Members of controlled group.—For purposes of applying subparagraph (A) to any taxable year in the testing period with respect to corporations which are component members of a controlled group of corporations for such taxable year, the $1,000,000 amount specified in subparagraph (A) shall be divided among such members under rules similar to the rules of section 1561.

"(iii) Certain carrybacks and carryovers not taken into account.—For purposes of subparagraph (A), taxable income shall be determined without regard to any amount carried to the taxable year under section 172 or 1212(a).

"(3) Certain tax-exempt organizations.—For purposes of this section—

"(A) Any organization subject to the tax imposed by section 511, and any private foundation, shall be treated as a corporation subject to tax under section 11.

"(B) Any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11.

"(C) Any reference to taxable income shall be treated as including a reference to unrelated business taxable income or net investment income (as the case may be).

In the case of any organization described in subparagraph (A), subsection (b)(2)(A) shall be applied by substituting '5th month' for '3rd month'.

"(h) Excessive Adjustment Under Section 6425.—

"(1) Addition to tax.—If the amount of an adjustment under section 6425 made before the 15th day of the 3rd month following the close of the taxable year is excessive, there shall be added to the tax under chapter 1 for the taxable year an amount determined at the underpayment rate established under section 6621 upon the excessive amount from the date on which the credit is allowed or the refund is paid to such 15th day.

"(2) Excessive amount.—For purposes of paragraph (1), the excessive amount is equal to the amount of the adjustment or (if smaller) the amount by which—

"(A) the income tax liability (as defined in section 6425(c)) for the taxable year as shown on the return for the taxable year, exceeds

"(B) the estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

"(i) Fiscal Years and Short Years.—

"(1) Fiscal years.—In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

"(2) Short taxable year.—This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

"(j) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) Technical and Conforming Amendments.—

(1) Section 6154 of such Code is hereby repealed.

(2) Subparagraph (C) of section 585(c)(3) of such Code is amended by striking out "section 6655(d)(3)" and inserting in lieu thereof "section 6655(e)(2)(A)(i)".

(3) Paragraph (1) of section 6201(b) of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(4) Subsection (c) of section 6425 of such Code is amended by striking out "section 6655(g)" and inserting in lieu thereof "section 6655(h)".

(5) Subsection (h) of section 6601 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(6) Subsection (e) of section 6651 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(7) The table of sections for subchapter A of chapter 62 of such Code is amended by striking out the item relating to section 6154.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 4512. REVISED WITHHOLDING CERTIFICATES REQUIRED TO BE PUT INTO EFFECT MORE PROMPTLY.

(a) General Rule.—Subparagraph (B) of section 3402(f)(3) (relating to when certificate takes effect) is amended to read as follows:

"(B) Furnished to take place of existing certificate.—

"(i) In general.—Except as provided in clauses (ii) and (iii), a withholding exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

"(ii) Employer may elect earlier effective date.—At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

"(iii) Change of status which affects next year.—Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act.

SEC. 4513. ESTIMATED TAX PENALTIES FOR 1987.

(a) DELAY OF INCREASE IN CURRENT YEAR LIABILITY TEST FOR INDIVIDUALS.—Notwithstanding section 1541(c) of the Tax Reform Act of 1986, the amendments made by section 1541 of such Act shall apply only to taxable years beginning after December 31, 1987.

(b) CORPORATE PROVISIONS.—

(1) RATIFICATION OF SECRETARIAL WAIVER.—The Congress hereby ratifies the safe harbor provided by paragraph (b) of the Treasury Temporary Regulation 1.6655-2T

(2) CORPORATIONS ALSO MAY USE 1986 TAX TO DETERMINE AMOUNT OF CERTAIN ESTIMATED TAX INSTALLMENTS DUE ON OR BEFORE JUNE 15, 1987.—

(A) IN GENERAL.—In the case of a large corporation, no addition to tax shall be imposed by section 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an estimated tax installment to which this subsection applies if no addition would be imposed with respect to such underpayment by reason of section 6655(d)(1) of such Code if such corporation were not a large corporation. The preceding sentence shall apply only to the extent the underpayment is paid on or before the last date prescribed for payment of the most recent installment of estimated tax due on or before September 15, 1987.

(B) INSTALLMENT TO WHICH SUBSECTION APPLIES.—This subsection applies to any installment of estimated tax for a taxable year beginning after December 31, 1986, which is due on or before June 15, 1987.

(C) LARGE CORPORATION.—For purposes of this subsection, the term "large corporation" has the meaning given such term by section 6655(i)(2) of such Code (as in effect on the day before the date of the enactment of this Act).

PART III—CORPORATE PROVISIONS

SEC. 4521. CERTAIN EARNINGS AND PROFITS ADJUSTMENTS NOT TO APPLY FOR CERTAIN PURPOSES.

(a) SPECIAL RULE FOR DETERMINING ADJUSTED BASIS OF STOCK OF MEMBERS OF AFFILIATED GROUP.—

(1) IN GENERAL.—Section 1503 (relating to computation and payment of tax by affiliated group) is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULE FOR DETERMINING ADJUSTMENTS TO BASIS.—

"(1) IN GENERAL.—Solely for purposes of determining gain or loss on the disposition of intragroup stock, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year—

"(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated years of the member with respect to such group) without regard to subsections (k) and (n) thereof (or any corresponding prior provision of law), and

"(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce basis of property or other tax attributes.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) INTRAGROUP STOCK.—The term 'intragroup stock' means any stock which—

"(i) is in a corporation which is a member of an affiliated group of corporations, and

"(ii) is held by another member of such group.

"(B) CONSOLIDATED YEAR.—The term 'consolidated year' means any taxable year for which the affiliated group makes a consolidated return."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to any intragroup stock disposed of after October 15, 1987, except that such amendment shall not apply to any intragroup stock disposed of after October 15, 1987, and before January 1, 1989, pursuant to a binding contract in effect on October 16, 1987. For purposes of determining the adjustments to the basis of such stock, such amendment shall be deemed to have been in effect for all periods whether before, on, or after October 16, 1987.

(b) DISTRIBUTIONS RECEIVED BY 20-PERCENT CORPORATE SHAREHOLDERS.—

(1) IN GENERAL.—Paragraph (1) of section 301(e) (relating to special rule for certain distributions received by 20-percent corporate shareholders) is amended by striking out "subsection (n) thereof" and inserting in lieu thereof "subsections (k) and (n) thereof".

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to distributions after October 15, 1987. For purposes of applying such amendment to any such distribution—

(i) for purposes of determining earnings and profits, such amendment shall be deemed to be in effect for all periods whether before, on, or after October 16, 1987, but

(ii) such amendment shall not affect the determination of whether any distribution on or before October 16, 1987, is a dividend and the amount of any reduction in accumulated earnings and profits on account of any such distribution.

(B) BINDING CONTRACT EXCEPTION.—In the case of a disposition of stock after October 15, 1987, and before January 1, 1989, pursuant to a binding contract in effect on October 16, 1987, the amendment made by paragraph (1) shall not apply for purposes of determining gain or loss on such disposition.

SEC. 4522. BENEFITS OF GRADUATED CORPORATE RATES NOT ALLOWED TO PERSONAL SERVICE CORPORATIONS.

(a) GENERAL RULE.—Subsection (b) of section 11 (relating to corporate tax rates) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be the sum of—

"(A) 15 percent of so much of the taxable income as does not exceed $50,000,

"(B) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000, and

"(C) 34 percent of so much of the taxable income as exceeds $75,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) $11,750.

"(2) CERTAIN PERSONAL SERVICE CORPORATIONS NOT ELIGIBLE FOR GRADUATED RATES.—Notwithstanding paragraph (1), the amount of the tax imposed by subsection (a) on the taxable income of a qualified personal service corporation (as defined in section 448(d)(2)) shall be equal to 34 percent of the taxable income."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

PART IV—PARTNERSHIP PROVISION

SEC. 4531. TREATMENT OF PUBLICLY TRADED PARTNERSHIPS UNDER SECTION 469.

(a) GENERAL RULE.—Section 469 (relating to passive activity losses and credits limited) is amended by redesignating subsections (k) and (l) as subsections (l) and (m), respectively, and by inserting after subsection (j) the following new subsection:

"(k) SEPARATE APPLICATION OF SECTION IN CASE OF PUBLICLY TRADED PARTNERSHIPS.—

"(1) IN GENERAL.—This section shall be applied separately with respect to items attributable to each publicly traded partnership.

"(2) PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'publicly traded partnership' means any partnership if—

"(A) interests in such partnership are traded on an established securities market, or

"(B) interests in such partnership are readily tradeable on a secondary market (or the substantial equivalent thereof)."

(b) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study regarding administrative and compliance issues related to the tax treatment of publicly traded partnerships and other large partnerships. The Secretary of the Treasury or his delegate shall not later than January 1, 1989, submit a report on such study to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, together with such recommendations as the Secretary of the Treasury deems appropriate.

(c) Effective Date.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 501 of the Tax Reform Act of 1986.

PART V—INCOME TAX PROVISION

SEC. 4541. EXPENSES OF OVERNIGHT CAMPS NOT ALLOWABLE FOR DEPENDENT CARE CREDIT.

(a) General Rule.—Subparagraph (A) of section 21(b)(2) (defining employment-related expenses) is amended by adding at the end thereof the following new sentence:

> "Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight."

(b) Effective Date.—The amendment made by subsection (a) shall apply to expenses paid in taxable years beginning after December 31, 1987.

PART VI—PENSION PROVISIONS

Subpart A—Full-Funding Limitations

SEC. 4550. FULL-FUNDING LIMITATION FOR DEDUCTIONS TO QUALIFIED PLANS.

(a) General Rule.—Paragraph (7) of section 412(c) (defining full-funding limitation) is amended to read as follows:

"(7) Full-funding limitation.—

"(A) In general.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of current liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) Current liability.—For purposes of subparagraph (A), the term 'current liability' has the meaning given such term by subsection (l)(7) (without regard to subparagraph (D) thereof).

"(C) Special rule for paragraph (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof."

(b) Amendment to ERISA.—Paragraph (7) of section 302(c) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(7) FULL-FUNDING LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of current liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) CURRENT LIABILITY.—For purposes of subparagraph (A), the term 'current liability' has the meaning given such term by subsection (d)(7) (without regard to subparagraph (D) thereof).

"(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1987.

Subpart B—Pension Funding Requirements

SEC. 4551. DEFINITIONS.

For purposes of this subpart—

(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) ERISA.—The term "ERISA" means the Employee Retirement Income Security Act of 1974.

CHAPTER 1—MODIFICATIONS OF MINIMUM FUNDING STANDARD

SEC. 4552. ADDITIONAL FUNDING REQUIREMENTS.

(a) AMENDMENTS TO 1986 CODE.—

(1) IN GENERAL.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection:

"(l) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v)), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 15 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 15 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability (determined without regard to such benefit increase).

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 percent, multiplied by

"(ii) the excess (if any) of the funded current liability percentage over 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greater of—

"(i) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, or

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 5 plan years (beginning with the plan year in which such event occurs).

In no event shall the unpredictable contingent event amount exceed the unfunded current liability of the plan for the plan year.

"(B) SPECIAL RULE FOR 1ST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary to reflect the application of this subparagraph.

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—For purposes of this paragraph, unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987, shall not be taken into account.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for each participant in excess of 100.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary).

"(C) INTEREST RATES USED.—

"(i) IN GENERAL.—The rate of interest used under the plan to determine costs shall be used to determine current liability. If such rate is not within the permissible range, the plan shall establish a new rate of interest within the permissible range to determine current liability.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average Federal mid-term rate (within the meaning of section 1274(d)) for the 3-year period ending on the last day before the beginning of the plan year (or, if shorter, the period for which a Federal mid-term rate was prescribed).

"(II) SECRETARIAL AUTHORITY TO PRESCRIBE SAFE HARBOR RATES.—The Secretary may prescribe 1 or more indices for determining a rate of interest to be used in lieu of the average Federal mid-term rate for purposes of subclause (I).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, unless the employer elects otherwise, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
5 or less	0
6	20
7	40
8	60
9	80
10 or more	100

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) has years of service before such time in excess of the years of service required for eligibility to participate in the plan.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), and (o) of section 414.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 412(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For additional requirements in the case of plans other than multiemployer plans, see subsection (l)."

(b) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Section 302 of ERISA is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v)), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 15 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 15 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability (determined without regard to such benefit increase).

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 percent, multiplied by

"(ii) the excess (if any) of the funded current liability percentage over 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greater of—

"(i) the amount of unpredictable contingent event benefits paid during the plan year, (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, or

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 5 plan years (beginning with the plan year in which such event occurs).

In no event shall the unpredictable contingent event amount exceed the unfunded current liability of the plan for the plan year.

"(B) Special rule for 1st year of amortization.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary to reflect the application of this subparagraph.

"(C) Paragraph not to apply to existing benefits.—For purposes of this paragraph, unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987, shall not be taken into account.

"(6) Special rules for small plans.—

"(A) Plans with 100 or fewer participants.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) Plans with more than 100 but no more than 150 participants.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for each participant in excess of 100.

"(C) Aggregation of plans.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) Current liability.—For purposes of this subsection—

"(A) In general.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(B) Treatment of unpredictable contingent event benefits.—

"(i) In general.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary).

"(C) INTEREST RATES USED.—

"(i) IN GENERAL.—The rate of interest used under the plan to determine costs shall be used to determine current liability. If such rate is not within the permissible range, the plan shall establish a new rate of interest within the permissible range to determine current liability.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average Federal mid-term rate (within the meaning of section 1274(d)) for the 3-year period ending on the last day before the beginning of the plan year (or, if shorter, the period for which a Federal mid-term rate was prescribed).

"(II) SECRETARIAL AUTHORITY TO PRESCRIBE SAFE HARBOR RATES.—The Secretary may prescribe 1 or more indices for determining a rate of interest to be used in lieu of the average Federal mid-term rate for purposes of subclause (I).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, unless the employer elects otherwise, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
5 or less	0
6	20
7	40
8	60
9	80
10 or more	100

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) has years of service before such time in excess of the years of service required for eligibility to participate in the plan.

"(8) Other definitions.—For purposes of this subsection—

"(A) Unfunded current liability.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) Funded current liability percentage.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) Controlled group.—The term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), and (o) of section 414.

"(D) Adjustments to prevent omissions and duplications.—The Secretary shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

(2) Conforming amendment.—Paragraph (2) of section 412(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For additional requirements in the case of plans other than multiemployer plans, see subsection (l)."

(b) Amendments to ERISA.—

(1) In general.—Section 302 of ERISA is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Additional Funding Requirements for Plans Which Are Not Multiemployer Plans.—

"(1) In general.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v)), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 15 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 15 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability (determined without regard to such benefit increase).

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 percent, multiplied by

"(ii) the excess (if any) of the funded current liability percentage over 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the excess (if any) of—

"(i) the amount of unpredictable contingent event benefits paid during the plan year, (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, over

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 5 plan years (beginning with the plan year in which such event occurs).

In no event shall the unpredictable contingent event amount exceed the unfunded current liability of the plan for the plan year.

"(B) SPECIAL RULE FOR 1ST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary to reflect the application of this subparagraph.

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—For purposes of this paragraph, unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987, shall not be taken into account.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NO MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for each participant in excess of 100.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary).

"(C) INTEREST RATES USED.—

"(i) IN GENERAL.—The rate of interest used under the plan to determine costs shall be used to determine current liability. If such rate is not within the permissible range, the plan shall establish a new rate of interest within the permissible range to determine current liability.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average Federal mid-term rate (within the meaning of section 1274(d) of the Internal Revenue Code of 1986) for the 3-year period ending on the last day before the beginning of the plan year (or, if shorter, the period for which a Federal mid-term rate was prescribed).

"(II) SECRETARIAL AUTHORITY TO PRESCRIBE SAFE HARBOR RATES.—The Secretary of the Treasury may prescribe 1 or more indices for determining a rate of interest to be used in lieu of the average Federal mid-term rate for purposes of subclause (I).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, unless the employer elects otherwise, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
5 or less	0
6	20
7	40
8	60
9	80
10 or more	100

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) has years of service before such time in excess of the years of service required for eligibility to participate in the plan.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary of the Treasury shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

(c) REVISION OF VALUATION REGULATIONS.—Effective with respect to plan years beginning after December 31, 1987, the provisions of the regulations prescribed under section 412(c)(2) of the 1986 Code which permit asset valuations to be based on a range between 85 percent and 115 percent of average value shall have no force and effect with respect to plans other than multiemployer plans (as defined in section 414(f) of the 1986 Code). The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1987.

SEC. 4553. TIME FOR MAKING CONTRIBUTIONS.

(a) PERIOD DURING WHICH CONTRIBUTIONS MAY BE MADE AFTER CLOSE OF YEAR.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (10) of section 412(c) of the 1986 Code (relating to time when certain contributions deemed made) is amended to read as follows:

"(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section—

"(A) PLANS OTHER THAN MULTIEMPLOYER PLANS.—In the case of a plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

"(i) beginning on the day after the last day of such plan year, and

"(ii) ending on the date which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

"(B) MULTIEMPLOYER PLANS.—In the case of a multiemployer plan, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary."

(2) AMENDMENT TO ERISA.—Paragraph (10) of section 302(c) of ERISA (relating to time when certain contributions deemed made) is amended to read as follows:

"(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section—

"(A) PLANS OTHER THAN MULTIEMPLOYER PLANS.—In the case of a plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

"(i) beginning on the day after the last day of such plan year, and

"(ii) ending on the date which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

"(B) MULTIEMPLOYER PLANS.—In the case of a multiemployer plan, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1987.

(b) QUARTERLY ESTIMATED PAYMENTS REQUIRED.—

(1) AMENDMENT TO 1986 CODE.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection:

"(m) QUARTERLY CONTRIBUTIONS REQUIRED.—

"(1) IN GENERAL.—If a plan (other than a multiemployer plan) fails to pay the full amount of a required installment for any plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

"(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

"(B) the rate under subsection (b)(5).

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

"(A) AMOUNT.—The amount of the underpayment shall be the excess of—

"(i) the required installment, over

"(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(B) PERIOD OF UNDERPAYMENT.—The period for which interest is charged under this subsection shall run from the due date for the installment to whichever of the following dates is the earlier—

"(i) the date which is 8½ months after the close of the plan year, or

"(ii) with respect to any portion of the underpayment, the date on which such portion is contributed to or under the plan.

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (B)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

"(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year

"(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year by reason of section 412, or

"(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

For plan years beginning in:	The applicable percentage is:
1988	5
1989	10
1990	15
1991	20
1992 and thereafter	25

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

"(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (l)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (l)(5)(A)(ii) for the plan year.

"(5) Fiscal years and short years.—

"(A) Fiscal years.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

"(B) Short plan year.—This subsection shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary."

(2) Amendment to erisa.—Section 302 of ERISA is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Quarterly Contributions Required.—

"(1) In general.—If a plan (other than a multiemployer plan) fails to pay the full amount of a required installment for any plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

"(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

"(B) the rate under subsection (b)(5).

"(2) Amount of underpayment, period of underpayment.—For purposes of paragraph (1)—

"(A) Amount.—The amount of the underpayment shall be the excess of—

"(i) the required installment, over

"(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(B) Period of underpayment.—The period for which any interest is charged under this subsection shall run from the due date for the installment to whichever of the following dates is the earlier—

"(i) the date which is 8½ months after the close of the plan year, or

"(ii) with respect to any portion of the underpayment, the date on which such portion is contributed to or under the plan.

"(C) Order of crediting contributions.—For purposes of subparagraph (B)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(3) Number of required installments; due dates.—For purposes of this subsection—

"(A) Payable in 4 installments.—There shall be 4 required installments for each plan year.

"(B) Time for payment of installments.—

In the case of the following required installments:	The due date is:

1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year

"(4) Amount of required installment.—For purposes of this subsection—

"(A) In general.—The amount of any required installment shall be the applicable percentage of the required annual payment.

"(B) Required annual payment.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year by reason of section 412, or

"(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(C) Applicable percentage.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

For plan years beginning in:	The applicable percentage is:
1988	5
1989	10
1990	15
1991	20
1992 and thereafter	25

"(D) Special rules for unpredictable contingent event benefits.—In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

"(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) for the plan year.

"(5) Fiscal years and short years.—

"(A) Fiscal years.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

"(B) Short plan year.—This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary."

(3) Effective date.—The amendments made by this subsection shall apply with respect to plan years beginning after 1987.

(c) Increase in Penalty From 5 Percent to 10 Percent.—

(1) In general.—Section 4971(a) of the 1986 Code (relating to initial tax on failure to meet minimum funding standards) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent (5 percent in the case of a multiemployer plan)".

(2) Effective date.—The amendments made by this section shall apply to plan years beginning after 1987.

(d) Requirement of Notice.—Section 101 of ERISA (relating to duty of disclosure and reporting) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Notice of Failure to Meet Minimum Funding Standards.—

"(1) In general.—If an employer of a plan other than a multiemployer plan fails to make a required installment or other payment required to meet the minimum funding standard under section 302 to a plan before the 60th day following the due date for such installment or other payment, the employer shall notify each participant and beneficiary of such plan of such failure. Such notice shall be made at such time and in such manner as the Secretary may prescribe.

"(2) Section not to apply if waiver pending.—This section shall not apply to any failure if the employer has filed a waiver request with respect to the required installment under section 303, except that if the waiver request is denied, notice under paragraph (1) shall be provided within 60 days after the date of such denial.

"(3) Definitions.—For purposes of this subsection, the terms 'required installment' and 'due date' have the same meanings given such terms by section 302(e)."

(e) Imposition of Lien Where Failure to Make Required Contributions.—

(1) In general.—Subtitle A of title IV of ERISA (relating to Pension Benefit Guaranty Corporation) is amended by adding at the end thereof the following new section:

"IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS

"Sec. 4010. (a) In General.—If any person in connection with a plan other than a multiemployer plan fails—

"(1) to make a required installment on or before the due date for such installment, or

"(2) to make any other payment required to meet the minimum funding standard under section 302,

there shall be a lien in favor of the plan in the unpaid amount of such installment or payment (including interest) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

"(b) NOTICE OF FAILURE; LIEN.—

"(1) NOTICE OF FAILURE.—A person committing a failure described in subsection (a) shall notify the corporation of such failure within 10 days of the due date for the required installment or the date the payment described in subsection (a)(2) is required to be made.

"(2) PERIOD OF LIEN.—

"(A) IN GENERAL.—The lien imposed by subsection (a) shall arise on the 30th day following the due date for the required installment or the date the payment described in subsection (a)(2) is required to be made and shall continue until the full payment of such installment or payment (including interest).

"(B) WAIVER REQUESTS.—No lien shall arise with respect to a required installment—

"(i) for which a waiver request is granted under section 303, or

"(ii) for which a waiver request is pending under section 303.

If a waiver request is denied, the lien shall arise on the day after such request is denied.

"(3) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under subsection (a) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

"(c) ENFORCEMENT.—Any lien created under subsection (a) may be perfected and enforced only by the corporation, or at the direction of the corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(d) DEFINITIONS.—For purposes of this section—

"(1) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by section 302(e)."

"(2) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986."

(3) CLERICAL AMENDMENT.—The table of contents for ERISA is amended by inserting after the item relating to section 4009 the following new item:

"Sec. 4010. Imposition of lien where failure to make required contributions."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1987.

SEC. 4554. LIABILITY OF MEMBERS OF CONTROLLED GROUP FOR TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.

(a) GENERAL RULE.—Section 4971 of the 1986 Code (relating to taxes on failure to meet minimum funding standards) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the tax imposed by subsection (a) or (b) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a) or (b).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (a) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(2) Subsection (b) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1987.

SEC. 4555. FUNDING WAIVERS.

(a) REQUIREMENTS FOR WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DUE DATE OF INSTALLMENT.—Subsection (d) of section 412 of the 1986 Code (relating to variance from minimum funding standard) is amended by adding at the end thereof the following new paragraph:

"(4) APPLICATION MUST BE SUBMITTED BEFORE DUE DATE.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this subsection with respect to any required installment under subsection (m) or other payment required to meet the minimum funding standard of this section unless an application therefor is submitted to the Secretary not later than the due date for such installment or payment. Any application under this paragraph may include more than 1 required installment or payment for any plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Subsection (d) of section 412 of the 1986 Code is amended—

(i) by striking out "substantial business hardship" in paragraphs (1) and (2) and inserting in lieu thereof "substantial temporary business hardship (substantial business hardship in the case of a multiemployer plan)", and

(ii) by striking out "SUBSTANTIAL" in the headings of paragraphs (1) and (2).

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 412 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the substantial temporary business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) AMENDMENTS TO ERISA.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DUE DATE.—Section 303 of ERISA (relating to variance from minimum funding standard) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) SPECIAL RULES.—

"(1) APPLICATION MUST BE SUBMITTED BEFORE DUE DATE.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this section with respect to any required installment under section 302(e) or other payment required to meet the minimum funding standard of section 302 unless an application therefor is submitted to the Secretary of the Treasury not later than the due date for such installment or payment. Any application under this paragraph may include more than 1 required installment or payment for any plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Section 303 of ERISA is amended by striking out "substantial business hardship" in subsections (a) and (b) and inserting in lieu thereof "substantial temporary business hardship (substantial business hardship in the case of a multiemployer plan)".

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 303 of ERISA (as amended by subparagraph (A)) is amended by adding at the end thereof the following new paragraph:

"(2) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the substantial temporary business hardship requirements of subsection (a) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(b) FREQUENCY OF WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—The second sentence of section 412(d) of the 1986 Code is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)".

(2) AMENDMENTS TO ERISA.—The second sentence of section 303(a) of ERISA is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)".

(c) INTEREST ON REPAYMENT OF WAIVED CONTRIBUTIONS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) Paragraph (1) of section 412(d) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(B) Subsection (e) of section 412 of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(2) AMENDMENTS TO ERISA.—

(A) Subsection (a) of section 303 of ERISA is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate used for purposes of computing the amortization charge described in section 302(b) for any plan year shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(B) Subsection (a) of section 304 of ERISA is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(d) NO WAIVERS FOR PLANS WITH UNFUNDED CURRENT LIABILITY.—

(1) AMENDMENT OF 1986 CODE.—Section 412(d)(1) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The Secretary shall not waive the minimum funding standard for any plan year for which a plan (other than a multiemployer plan) has an unfunded current liability (within the meaning of subsection (l)(8)(A))."

(2) AMENDMENT OF ERISA.—Section 303(a) of ERISA is amended by adding at the end thereof the following new sentence: "The Secretary of the Treasury shall not waive the minimum funding standard for any plan year for which a plan (other than a multiemployer plan) has an unfunded current liability (within the meaning of section 302(d)(8)(A))."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any application submitted for any plan year beginning after December 31, 1987.

SEC. 4556. OTHER FUNDING CHANGES.

(a) AMORTIZATION PERIODS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) Paragraphs (2)(B)(iv) and (3)(B)(ii) of section 412(b) of the 1986 Code are each amended by striking out "15 plan years" and inserting in lieu thereof "5 plan years (15 plan years in the case of a multiemployer plan)".

(B) Paragraphs (2)(B)(v) and (3)(B)(iii) of section 412(b) of the 1986 Code are each amended by striking out "30 plan years" and inserting in lieu thereof "5 plan years (30 plan years in the case of a multiemployer plan)".

(2) AMENDMENTS TO ERISA.—

(A) Paragraphs (2)(B)(iv) and (3)(B)(ii) of section 302(b) of ERISA are each amended by striking out "15 plan years" and inserting in lieu thereof "5 plan years (15 plan years in the case of a multiemployer plan)".

(B) Paragraphs (2)(B)(v) and (3)(B)(iii) of section 302(b) of ERISA are each amended by striking out "30 plan years" and inserting in lieu thereof "5 plan years (30 plan years in the case of a multiemployer plan)".

(b) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (3) of section 412(c) of the 1986 Code is amended to read as follows:

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) in the case of—

"(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

"(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(2) AMENDMENT TO ERISA.—Paragraph (3) of section 302(c) of ERISA is amended to read as follows:

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) in the case of—

"(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

"(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(c) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS TO CERTAIN PLANS NOT LESS THAN UNFUNDED CURRENT LIABILITY.—Paragraph (1) of section 404(a) of the 1986 Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(l). For purposes of this subparagraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(c))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1987.

CHAPTER 2—TREATMENT OF PLAN TERMINATIONS

SEC. 4557. STANDARD TERMINATION PROCEDURES AVAILABLE ONLY WHEN ASSETS SUFFICIENT TO MEET TERMINATION LIABILITY.

(a) GENERAL RULE.—Subparagraph (D) of section 4041(b)(1) of ERISA is amended to read as follows:

"(D) when the final distribution of assets occurs, the plan is sufficient for termination liability (determined as of the termination date)."

(b) TECHNICAL AMENDMENTS.—

(1) Paragraphs (2)(A), (2)(C), (2)(D), and (3) of section 4041(b) of ERISA are each amended by striking out "benefit commitments" each place it appears and inserting in lieu thereof "termination liability".

(2) Subparagraph (B) of section 4041(b)(2) of ERISA is amended—

(A) by striking out "the amount of such person's benefit commitments (if any)" and inserting in lieu thereof "the amount of the termination liability (if any) attributable to such person", and

(B) by striking out "such benefit commitments" and inserting in lieu thereof "such termination liability".

(3)(A) Subparagraph (A) of section 4041(b)(3) of ERISA is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) purchase irrevocable commitments from an insurer to provide all benefits under the plan, or

"(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefits under the plan."

(B) Subparagraph (B) of section 4041(b)(3) of ERISA is amended by striking out "so as to pay" and all that follows and inserting in lieu thereof "so as to pay all benefits under the plan".

(4) Paragraphs (2) and (3) of section 4041(c) of ERISA are each amended by striking out "benefit commitments" each place it appears (including in any heading) and inserting in lieu thereof "termination liability".

(5) Paragraph (1) of section 4041(d) of ERISA is amended—

(A) by striking out "no amount of unfunded benefit commitments" and inserting in lieu thereof "no unfunded termination liability", and

(B) by striking out "BENEFIT COMMITMENTS" in the paragraph heading and inserting in lieu thereof "TERMINATION LIABILITY".

(6) Paragraph (16) of section 4001(a) of ERISA is amended to read as follows:

"(16) 'termination liability' means all liabilities of employees and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Internal Revenue Code of 1986);".

(7) Paragraph (18) of section 4001(a) of ERISA is amended to read as follows:

"(18) 'unfunded termination liability' means, as of any date, the excess (if any) of—

"(A) the termination liability (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the current value (as of such date) of the assets of the plan;".

(8) Subsection (i) of section 4042 of ERISA is amended—

(A) by striking out "all benefit commitments under the plan are" and inserting in lieu thereof "all termination liability under the plan is attributable to", and

(B) by striking out "no amount of unfunded benefit commitments" and inserting in lieu thereof "no unfunded termination liability".

(c) Effective Date.—The amendments made by this section shall apply in the case of any termination—

(1) where notice to the Pension Benefit Guaranty Corporation with respect to such termination is provided after October 16, 1987, or

(2) any termination instituted by such Corporation under section 4042 of ERISA after October 16, 1987.

SEC. 4558. DISTRESS TERMINATIONS.

(a) Bankruptcy Reorganization Proceedings Not Separate Basis for Distress Termination.—

(1) Subparagraph (B) of section 4041(c)(2) of ERISA is amended—

(A) by striking out "clause (i), (ii), or (iii)" in the material preceding clause (i) and inserting in lieu thereof "clause (i) or (ii)",

(B) by striking out "a substantial member" in the material preceding clause (i) and inserting in lieu thereof "a member",

(C) by inserting before the period at the end of clause (i) the following: "or become a case seeking a reorganization", and

(D) by striking out clause (ii) and redesignating clause (iii) as clause (ii).

(2) Paragraph (2) of section 4041(c) of ERISA is amended by striking out subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(3) Section 4067 of ERISA is amended by striking out "controlled groups who are" and inserting in lieu thereof "controlled groups who are or may become".

(b) Employer Liability to Participants Based on Termination Liability.—

(1) Subparagraph (A) of section 4062(c)(1) of ERISA is amended—

(A) by striking out "outstanding amount of the benefit commitments" and inserting in lieu thereof "outstanding amount of termination liability", and

(B) by striking out the second sentence and inserting in lieu thereof the following: "Except as provided in subparagraph (B), the liability of such person under this subsection shall be equal to the total outstanding amount of termination liability."

(2) Paragraph (19) of section 4001(a) of ERISA is amended to read as follows:

"(19) 'outstanding amount of termination liability' means, with respect to any plan, the excess (if any) of—

"(A) the termination liability (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the termination liability which would be so determined by only taking into account benefits which are guaranteed under section 4022 or to which assets of the plan are required to be allocated under section 4044;".

(3) Subparagraph (A) of section 4049(c)(1) of ERISA is amended by striking out "the outstanding amount of benefit commitments to" and inserting in lieu thereof "the portion of the outstanding termination liability attributable to".

(4) Section 4062(c)(1)(B) of ERISA is amended by striking out "benefit commitment" and inserting in lieu thereof "termination liability".

(c) EMPLOYER LIABILITY TO THE CORPORATION.—

(1) IN GENERAL.—Subparagraph (A) of section 4062(b)(1) of ERISA is amended to read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) shall be the total amount of the unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the Corporation."

(2) LIEN.—

(A) Subsection (a) of section 4068 of ERISA is amended—

(i) by striking out "section 4062(b)(1)(A)(i)" the first place it appears and inserting in lieu thereof "section 4062(b)(1)(A)", and

(ii) by striking out "section 4062(b)(1)(A)(i)" the second place it appears and inserting in lieu thereof "section 4062(b)(1)(A) (including interest)".

(B) Title IV of ERISA is amended by transferring subsection (e) of section 4062 of such Act to the end of section 4068 of such Act and by redesignating such subsection as subsection (f).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2) or (3), the amendments made by this section shall apply in the case of—

(A) any termination where notice to the Pension Benefit Guaranty Corporation with respect to such termination is provided after October 16, 1987, and

(B) any termination instituted by such Corporation under section 4042 of ERISA after October 16, 1987.

(2) REORGANIZATIONS.—The amendments made by subsection (a) shall apply to petitions described in section 4041(c)(2)(B)(ii)(I) of ERISA filed after October 16, 1987.

(3) LIENS.—The amendments made by subsection (c)(2) shall not apply to a person for the period of any proceedings pursuant to a petition described in section 4041(c)(2)(B)(ii)(I) of ERISA filed before October 17, 1987.

SEC. 4559. IMPOSITION OF LIEN WHERE SIGNIFICANT UNFUNDED CURRENT LIABILITY.

(a) GENERAL RULE.—Subtitle A of title IV of ERISA (relating to Pension Benefit Guaranty Corporation) is amended by adding at the end thereof the following new section:

"IMPOSITION OF LIEN WHERE SIGNIFICANT UNFUNDED CURRENT LIABILITY

"SEC. 4011. (a) IN GENERAL.—If, as of the close of any plan year of a single-employer defined benefit plan—

"(1) the funded current liability percentage of the plan is less than 70 percent, and

"(2) the unfunded current liability of the plan is greater than $25,000,000,

there shall be a lien in favor of the plan in the amount determined under subsection (b) upon all property and rights to property, of the contributing sponsor maintaining the plan and each member of any controlled group (within the meaning of section 412(l)(8)(C)) of which such contributing sponsor is a member. The contributing sponsor shall notify the corporation within 2½ months after the close of any plan year if the plan is described in paragraphs (1) and (2) for such year.

"(b) AMOUNT AND PERIOD OF LIEN.—

"(A) AMOUNT.—The amount of the lien in effect for any plan year shall be the portion of the unfunded current liability of the plan for the plan year equal to the lesser of—

"(i) so much of the unfunded current liability as exceeds $25,000,000, or

"(ii) the amount necessary to increase the funded current liability percentage to 70 percent.

"(B) PERIOD OF LIEN.—The lien imposed by subsection (a) shall—

"(i) arise on the 1st day of the plan year following the 1st plan year in which the plan is described in paragraphs (1) and (2) of subsection (a), and

"(ii) shall continue for plan years until the close of a plan year in which the plan is not described in paragraphs (1) and (2) of subsection (a).

Another lien may be imposed after the expiration of a lien under this subparagraph.

"(c) ENFORCEMENT.—Any lien created under subsection (a) may be perfected and enforced only by the corporation, or at the direction of the corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) FUNDED CURRENT LIABILITY PERCENTAGE AND UNFUNDED CURRENT LIABILITY.—The terms 'funded current liability percentage' and 'unfunded current liability' shall have the meanings given such terms by section 302(d), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year.

"(2) CERTAIN RULES TO APPLY.—The amount subject to a lien imposed by subsection (a) shall be treated as taxes due and owing to the United States and rules similar to the rules of subsection (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount of such lien."

(b) CLERICAL AMENDMENT.—The table of contents for ERISA is amended by inserting after the item relating to section 4010 the following new item:

"Sec. 4011. Imposition of lien where significant unfunded current liability."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after the date of the enactment of this Act.

CHAPTER 3—INCREASE IN PREMIUM RATES

SEC. 4560. INCREASE IN PREMIUM RATES.

(a) GENERAL RULE.—Clause (i) of section 4006(a)(3)(A) of ERISA is amended by striking out "$8.50" and inserting in lieu thereof "the sum of $14 plus the exposure-related premium (if any) determined under subparagraph (E)".

(b) DETERMINATION OF EXPOSURE-RELATED PREMIUM.—Paragraph (3) of section 4006(a) of ERISA is amended by adding at the end thereof the following new subparagraph:

"(E)(i) The exposure-related premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

"(ii) The amount determined under this clause for any plan year shall be an amount equal to $6.00 for each $1,000 of unfunded current liability under the plan as of the close of the preceding plan year.

"(iii) For purposes of clause (ii)—

"(I) Except as provided in subclause (II), the term 'unfunded current liability' has the meaning given such term by section 412(l)(8)(A) of the Internal Revenue Code of 1986.

"(II) For purposes of subclause (I), in computing current liability under section 412(l)(8)(A)(i) of such Code, the applicable percentage under section 412(l)(7)(D)(ii) of such Code shall be 100 percent for any participant with more than 5 years of participation.

"(iv)(I) Except as provided in this clause, the aggregate increase in the premium payable with respect to any participant by reason of this subparagraph shall not exceed $70.

"(II) In the case of any plan year beginning in a calendar year after 1988, the $70 amount in subclause (I) shall be increased by the percentage (if any) by which the contribution and benefit base in effect during such calendar year under section 230 of the Social Security Act exceeds such contribution and benefit base in effect during 1988.

"(III) If an employer made contributions to a plan during 1 or more of the 5 plan years preceding the 1st plan year to which this subparagraph applies in an amount not less than the maximum amount allowable as a deduction with respect to such contributions under section 404 of such Code, the dollar amount in effect under subclause (I) for the 1st 5 plan years to which this subparagraph applies shall be reduced by $10 for each plan year for which such contributions were made. The $10 amount under the preceding sentence shall be adjusted at the same time and the same manner as provided under subclause (II).

"(v)(I) No additional premium shall be determined under this subparagraph with respect to any plan which has no more than 100 participants on each day during the preceding plan year.

"(II) In the case of a plan to which subclause (I) does not apply and which did not have more than 150 participants on each day during the preceding plan year, the amount of the additional premium under this subparagraph for such plan year shall be equal to the product of such premium determined without regard to this subclause multiplied by 2 percent for each participant in excess of 100.

"(III) For purposes of this clause, all single-employer plans maintained by the same contributing sponsor (or any member of such contributing sponsor's controlled group) shall be treated as 1 plan. For purposes of the preceding sentence, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of such Code."

(c) Liability for Premium.—

(1) In general.—Section 4007 of ERISA is amended by striking out "plan administrator" each place it appears and inserting in lieu thereof "designated payor".

(2) Designated payor.—Section 4007 of ERISA is amended by adding at the end thereof the following new subsection:

"(e)(1) For purposes of this section, the term 'designated payor' means—

"(A) the contributing sponsor or plan administrator in the case of a single-employer plan, and

"(B) the plan administrator in the case of a multiemployer plan.

"(2) If the designated payor of any single-employer plan is a member of a controlled group, each member of such group shall be jointly and severally liable for any premiums required to be paid by such designated payor. For purposes of the preceding sentence, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(d) Deposit of Premiums Into Separate Revolving Fund.—Section 4005 of ERISA (relating to establishment of Pension Benefit Guaranty funds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f)(1) A seventh fund shall be established and credited with—

"(A) premiums, penalties, and interest charges collected under section 4006(a)(3)(A)(i) (not described in subparagraph (B)) to the extent attributable to the amount of the premium in excess of $8.50, "(B) premiums, penalties, and interest charges collected under section 4006(a)(3)(E), and

"(C) earnings on investments of the fund or on assets credited to the fund.

"(2) Amounts in the fund shall be available for transfer to other funds established under this section with respect to a single-employer plan but shall not be available to pay—

"(A) administrative costs of the corporation, or

"(B) benefits under any plan which was terminated before January 1, 1988,

unless no other amounts are available for such payment.

"(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate."

(e) Effective Date.—The amendments made by this section shall apply to plan years beginning after December 31, 1987.

PART VII—ESTATE AND GIFT TAXES

SEC. 4561. RETENTION OF 1987 RATES FOR 2 YEARS.

Subsection (c)(2)(D) of section 2001 (relating to rate schedule) is amended by striking out "or 1987" each place it appears in the text and heading thereof and inserting in lieu thereof "1987, 1988, or 1989".

PART VIII—EXCISE TAXES

SEC. 4571. EXTENSION OF TELEPHONE EXCISE TAX.

Paragraph (2) of section 4251(b) (relating to applicable percentage) is amended to read as follows:

"(2) Applicable percentage.—The term 'applicable percentage' means 3 percent; except that, with respect to amounts paid pursuant to bills first rendered after 1990, the applicable percentage shall be zero."

SEC. 4572. FUELS FOR MOTOR VEHICLES AND CERTAIN OTHER FUELS IMPOSED AT WHOLESALE LEVEL.

(a) In General.—Part III of subchapter A of chapter 32 is amended by inserting after subpart A the following new subpart:

"Subpart B—Fuels for Motor Vehicles and Certain Other Fuels

"Sec. 4091. Imposition of tax.
"Sec. 4092. Definitions.
"Sec. 4093. Exemption; special rule.

"SEC. 4091. IMPOSITION OF TAX.

"(a) In General.—There is hereby imposed a tax on the sale of any taxable fuel by the producer or the importer thereof or by any producer of a taxable fuel.

"(b) Rate of Tax.—

"(1) In general.—The rate of the tax imposed by subsection (a) shall be the sum of—

"(A)(i) the Highway Trust Fund financing rate in the case of diesel fuel and special motor fuels, or

"(ii) the Airport and Airway Trust Fund financing rate in the case of aviation fuel, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate in the case of any taxable fuel other than liquefied petroleum gas.

"(2) HIGHWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Highway Trust Fund financing rate is—

"(A) 15 cents per gallon in the case of diesel fuel, and

"(B) 9 cents per gallon in the case of special motor fuels.

"(3) AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Airport and Airway Trust Fund financing rate is 14 cents per gallon.

"(4) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

"(5) TERMINATION OF RATES.—

"(A) The Highway Trust Fund financing rate shall not apply on and after October 1, 1993.

"(B) The Airport and Airway Trust Fund financing rate shall not apply on and after January 1, 1988.

"(C) The Leaking Underground Storage Tank Trust Fund financing rate shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

"(c) REDUCED RATE OF TAX FOR CERTAIN FUELS CONTAINING ALCOHOL.—Under regulations prescribed by the Secretary—

"(1) 10-PERCENT ALCOHOL FUELS.—

"(A) IN GENERAL.—The Highway Trust Fund financing rate shall be—

"(i) 9 cents per gallon in the case of the sale of any mixture of diesel fuel if—

"(I) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(II) the diesel fuel in such mixture was not taxed under clause (ii),

"(ii) 10 cents per gallon in the case of the sale of diesel fuel for use in producing a mixture described in clause (i) at the time of such sale,

"(iii) 3 cents per gallon in the case of the sale of any mixture of special motor fuel if—

"(I) at least 10 percent of such mixture consists of alcohol (as so defined), and

"(II) the special motor fuel in such mixture was not taxed under clause (iv), and

"(iv) 3 1/3 cents per gallon in the case of the sale of any special motor fuel for use in producing a mixture described in clause (iii).

"(B) LATER SEPARATION.—If any person separates the liquid fuel from a mixture of the liquid fuel and alcohol on which the Highway Trust Fund financing rate was determined under clause (i) or (iii) of subparagraph (A) (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such liquid fuel. The amount of tax imposed on any sale of such liquid fuel by such person shall be—

"(i) 5 cents per gallon in the case of diesel fuel, and

"(ii) 5 2/3 cents per gallon in the case of any special motor fuel.

"(C) TERMINATION.—Subparagraph (A) shall not apply to any sale after September 30, 1993.

"(2) QUALIFIED METHANOL AND ETHANOL FUEL.—

"(A) IN GENERAL.—In the case of the sale of any special motor fuel which is a qualified methanol or ethanol fuel—

"(i) the Highway Trust Fund financing rate shall be 3 cents per gallon, and

"(ii) the Leaking Underground Storage Tank Trust Fund financing rate shall be 0.05 cent per gallon.

"(B) QUALIFIED METHANOL OR ETHANOL FUEL.—For purposes of subparagraph (A), the term 'qualified methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from a substance other than petroleum or natural gas.

"(C) TERMINATION.—Subparagraph (A) shall not apply to any sale after September 30, 1993.

"(3) PARTIALLY EXEMPT METHANOL OR ETHANOL FUEL.—

"(A) IN GENERAL.—In the case of the sale of any special motor fuel which is a partially exempt methanol or ethanol fuel, the Highway Trust Fund financing rate shall be 4 1/2 cents per gallon.

"(B) PARTIALLY EXEMPT METHANOL OR ETHANOL FUEL.—For purposes of subparagraph (A), the term 'partially exempt methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

"SEC. 4092. DEFINITIONS.

"(a) TAXABLE FUEL.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxable fuel' means—

"(A) diesel fuel,

"(B) any special motor fuel, and

"(C) any aviation fuel.

"(2) EXCEPTIONS.—The term 'taxable fuel' shall not include—

"(A) any product taxable under section 4081, or

"(B) any product for use as heating oil.

"(3) DIESEL FUEL.—The term 'diesel fuel' means any liquid which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

"(4) SPECIAL MOTOR FUEL.—

"(A) IN GENERAL.—The term 'special motor fuel' means any liquid described in subparagraph (B) which is suitable for use as a fuel in a motor vehicle or motorboat.

"(B) LIQUIDS DESCRIBED.—A liquid is described in this subparagraph if such liquid is benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, fuel oil, diesel fuel, or gasoline subject to tax under section 4081).

"(5) Aviation fuel.—The term 'aviation fuel' means any liquid which is suitable for use as a fuel in an aircraft.

"(b) Producer.—For purposes of this subpart—

"(1) In general.—The term 'producer' includes—

"(A) any person who is a refiner, compounder, blender, or wholesale distributor, and a dealer selling taxable fuel exclusively to producers of taxable fuel, as well as a producer,

"(B) but only if such person elects to register under section 4101 with respect to the tax imposed by section 4091.

Any person to whom taxable fuel is sold tax-free under this subpart shall be considered the producer of such taxable fuel.

"(2) Wholesale distributor.—For purposes of paragraph (1), the term 'wholesale distributor' includes any person who sells taxable fuel to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks. Such term does not include any person who (excluding the term 'wholesale distributor' from paragraph (1)) is a producer or importer.

"SEC. 4093. EXEMPTION; SPECIAL RULES.

"(a) Exemption of Sales to Producer.—Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply in the case of sales of a taxable fuel to a producer of such fuel.

"(b) Certain Uses Treated as Sales.—If a producer or importer uses (otherwise than in the production of any taxable fuel) any taxable fuel sold to him free of tax, or produced or imported by him, such use shall be treated for the purposes of this chapter as a sale.

"(c) Special Administrative Rules.—Under regulations prescribed by the Secretary, information reporting by the remitter of the tax under this section and information reporting and registration by such other persons shall be required as the Secretary deems necessary.

"(d) Cross Reference.—

For provisions allowing a credit or refund for fuel not used for certain taxable purposes, see section 6427."

(b) Conforming Amendment to Section 4041.—

(1) So much of section 4041 as precedes subsection (f) is amended to read as follows:

"SEC. 4041. GASOLINE USED IN NONCOMMERCIAL AVIATION.

"(a) Imposition of Tax.—

"(1) In general.—There is hereby imposed a tax (at the rate specified in paragraph (2)) on any product taxable under section 4081—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation, or

"(B) used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such product under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed under section 4081.

"(2) RATE OF TAX.—The rate of tax imposed by paragraph (1) on any product taxable under section 4081 is the excess of 12 cents a gallon over the Highway Trust Fund financing rate at which tax was imposed on such product under section 4081.

"(3) NONCOMMERCIAL AVIATION DEFINED.—For purposes of this section, the term 'noncommercial aviation' means any use of aircraft, other than use in a business of transporting persons or property for compensation or hire by air. The term also includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282.

"(4) TERMINATION.—The tax imposed by paragraph (1) shall not apply on and after January 1, 1988."

(2) Section 4041 is amended by striking out subsections (i), (j), (k), (m), and (n), and by redesignating subsections (f), (g), (h), and (l) as subsections (b), (c), (d), and (e), respectively.

(3) Section 4041 is amended by adding at the end thereof the following new subsections.

"(f) EXEMPTION FOR CERTAIN FUELS CONTAINING ALCOHOL.—

"(1) IN GENERAL.—No tax shall be imposed under this section on—

"(A) any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)), and

"(B) any partially exempt methanol or ethanol fuel.

"(2) PARTIALLY EXEMPT METHANOL OR ETHANOL FUEL.—For purposes of this subsection, the term 'partially exempt methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

"(3) SPECIAL RULES RELATING TO 10 PERCENT ALCOHOL FUELS.—

"(A) LATER SEPARATION.—If any person separates the liquid fuel from a mixture of the liquid fuel and alcohol to which paragraph (1)(A) applied, such separation shall be treated as a sale of the liquid fuel.

"(B) TERMINATION.—Paragraph (1)(A) shall not apply to any sale or use after September 30, 1993.

"(g) OTHER SPECIAL RULES.—

"(1) REGISTRATION.—If any product taxable under section 4081 is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that the tax imposed by this section applies to such sale unless the purchaser is registered in such manner (and furnishes such information in respect of the use of the product) as the Secretary shall by regulations prescribe.

"(2) SALES BY THE UNITED STATES, ETC.—The tax imposed by this section shall apply with respect to liquids sold at retail by the United States, or by any agency or instrumentality of the United States, unless sales by such agency or instrumentality are by statute specifically exempted from such taxes."

(4) Paragraph (3) of section 4041(b), as redesignated by this subsection, is amended by striking out "Except with respect to

the taxes imposed by subsection (d), paragraph" and inserting in lieu thereof "Paragraph".

(5) The last sentence of section 4041(c), as redesignated by this subsection, is amended by striking out "Except with respect to the taxes imposed by subsection (d), paragraphs" and inserting in lieu thereof "Paragraphs".

(c) AMENDMENTS RELATING TO CREDITS AND REFUNDS.—

(1) Subsection (a) of section 6427 is amended—

(A) by striking out "section 4041(a) or (c)" and inserting in lieu thereof "section 4041", and

(B) by inserting "OF FUEL SOLD FOR USE IN AVIATION" after "NONTAXABLE USES" in the heading.

(2) Subsection (b) of section 6427 is amended by striking out "subsection (a) of section 4041" each place it appears and inserting in lieu thereof "section 4041 or 4091".

(3) Subsection (c) of section 6427 is amended—

(A) by striking out "section 4041(a) or (c)" and inserting in lieu thereof "section 4041 or 4091", and

(B) by striking out the parenthetical in the last sentence and inserting in lieu thereof "(except that references to gasoline in such paragraph (4) shall be treated as references to fuels taxable under sections 4041 and 4091)".

(4) Subsection (d) of section 6427 is amended—

(A) by inserting "or 4091" after "section 4041" in paragraph (2) thereof,

(B) by striking out "section 4041(h)(2)" and inserting in lieu thereof "section 4041(d)(2)",

(C) by striking out "section 4041(h)(2)(C)" and inserting in lieu thereof "section 4041(d)(2)(C)", and

(D) by striking out "section 4041(l)" and inserting in lieu thereof "section 4041(e)".

(5) Subparagraph (B) of section 6427(e)(1) is amended by inserting "or 4091" after "section 4041".

(6) Subsection (f) of section 6427 is amended to read as follows:

"(f) TAXABLE LIQUIDS USED TO PRODUCE CERTAIN ALCOHOL FUELS.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any gasoline, diesel fuel, or special motor fuel on which tax was imposed at the regular Highway Trust Fund financing rate is used by any person in producing a mixture described in section 4081(c) or in clause (i) or (iii) of section 4091(c)(1)(A) (as the case may be) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular Highway Trust Fund financing rate over the incentive Highway Trust Fund Financing rate with respect to such fuel.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR HIGHWAY TRUST FUND FINANCING RATE.—The term 'regular Highway Trust Fund financing rate' means—

"(i) 9 cents per gallon in the case of gasoline,

"(ii) 15 cents per gallon in the case of diesel fuel, or "(iii) 9 cents per gallon in the case of a special motor fuel.

"(B) INCENTIVE HIGHWAY TRUST FUND FINANCING RATE.—The term 'incentive Highway Trust Fund Financing rate' means—

"(i) 5 2/3 cents per gallon in the case of gasoline,

"(ii) 10 cents per gallon in the case of diesel fuel, or

"(iii) 5 2/3 cents per gallon in the case of a special motor fuel.

"(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any gasoline, diesel fuel, or special motor fuel with respect to which an amount is payable under subsection (b), (d), (e), or (m) of this section or under section 6420 or 6421."

(7) Subsection (i) of section 6427 is amended by striking out "and (h)" each place it appears and inserting in lieu thereof "(h), and (m)".

(8) Paragraph (1) of section 6427(l) is amended by striking out "section 4041(c)(2)" each place it appears and inserting in lieu thereof "section 4041".

(9) Section 6427 is amended by striking out subsection (o), by redesignating subsections (m) and (n) as subsections (n) and (o), respectively, and by inserting after subsection (l) the following new subsection:

"(m) NONTAXABLE USES OF FUEL SOLD FOR USE IN CERTAIN VEHICLES, ETC.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any fuel on which tax has been imposed under section 4091 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to such person an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on such fuel under section 4091.

"(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means—

"(A) in the case of diesel fuel, any use other than use as a fuel in a diesel-powered highway vehicle or a diesel-powered train,

"(B) in the case of any special motor fuel, any use other than use as a fuel in a motor vehicle or motorboat,

"(C) in the case of diesel fuel and any special motor fuel, any off-highway business use (as defined in section 6421(e)(2)), and

"(D) in the case of aviation fuel, any use other than use as a fuel in an aircraft in noncommercial aviation (within the meaning of section 4041(a)(3)).

For purposes of the preceding sentence, the terms 'diesel fuel', 'special motor fuel', and 'aviation fuel' have the respective meanings given such terms by section 4092.

"(3) REFUND OF HIGHWAY TRUST FUND FINANCING RATE FOR DIESEL FUEL USED IN TRAINS.—For purposes of paragraph (1), the use of diesel fuel as a fuel in a diesel-powered train shall be treated as a nontaxable use but only with respect to the portion of the tax imposed on such fuel by section 4091 which is attributable to the Highway Trust Fund financing rate under such section.

"(4) REFUND OF AIRPORT AND AIRWAY TRUST FUND FINANCING RATE FOR AVIATION FUEL USED IN NONCOMMERCIAL AVIATION.—For purposes of paragraph (1), the use of aviation fuel as a fuel in an aircraft in noncommercial aviation (within the meaning of section 4041(a)(3)) shall be treated as a nontaxable use but only with respect to the portion of the tax imposed on such fuel by section 4091 which is attributable to the Airport and Airway Trust Fund financing rate under such section."

(10) Subsection (o) of section 6427, as redesignated by paragraph (9), is amended to read as follows:

"(o) TERMINATION OF CERTAIN PROVISIONS.—Except with respect to taxes imposed at the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 or 4091, subsections (a), (b), (c), (d), (g), (h), and (m) shall apply only with respect to fuels purchased before October 1, 1993."

(d) OTHER CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 40 is amended by striking out "subsection (b)(2), (k), or (m) of section 4041 or section 4081(c)" and inserting in lieu thereof "section 4041(f), 4081(c), or 4091(c)".

(2) Subparagraph (B) of section 4081(e)(2), as amended by section 1703 of the Tax Reform Act of 1986, is amended by striking out "net revenues" and all that follows and inserting in lieu thereof the following: "net revenues are at least $500,000,000 from taxes attributable to Leaking Underground Storage Tank Trust Fund financing rates of tax imposed under this section and sections 4042 and 4091."

(3) Subsection (a) of section 4101, as amended by section 1703 of the Tax Reform Act of 1986, is amended by inserting "or 4091" after "section 4081".

(4) Subsection (a) of section 4221 is amended by inserting "or 4091" after "section 4081".

(5) Section 6206 is amended by striking out "or 4041" and inserting in lieu thereof "or 4041 or 4091".

(6) Subparagraph (A) of section 6416(a)(2) is amended by striking out "special fuels" and inserting in lieu thereof "gasoline used in noncommercial aviation".

(7) Paragraph (2) of section 6416(b) is amended by striking out "or under paragraph (1)(A) or (2)(A) of section 4041(a) or under paragraph (1)(A) or (2)(A) of section 4041(d)".

(8) Subparagraph (F) of section 6416(b)(2) is amended by striking out "referred to in section 4041" and inserting in lieu thereof "(as defined in section 4092(a)(4))".

(9) Subparagraph (A) of section 6416(b)(3) is amended by inserting "and other than any taxable fuel under section 4091" after "section 4081".

(10) Subparagraph (B) of section 6416(b)(3) is amended by striking out "such gasoline" and inserting in lieu thereof "or any taxable fuel under section 4091, such gasoline or fuel".

(11) Paragraph (1) of section 6420(i) is amended to read as follows:

"(1) For credit or refund of tax in case of special motor fuels used on a farm for farming purposes, see section 6427."

(12) Subparagraph (C) of section 6421(e)(2) is amended to read as follows:

"(C) COMMERCIAL FISHING VESSELS.—For provisions allowing a credit or refund for gasoline and special motor fuels used for commercial fishing vessels, see section 6416(b)(2)(B)."

(13) Subparagraph (A) of section 6421(f)(2) is amended by striking out "section 4041(c)(4)" and inserting in lieu thereof "section 4041(a)(3)".

(14) Subsection (j) of section 6421 is amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(15) Section 6652 is amended by striking out subsection (j) (relating to failure to give written notice to certain sellers of diesel fuel) and by redesignating subsections (l) and (m) as subsections (k) and (l), respectively.

(16) Paragraph (1) of section 9502(b) is amended by striking out "subsections (c) and (e) of section 4041 (taxes on aviation fuel)" and inserting in lieu thereof "section 4041 (relating to gasoline used in noncommercial aviation)".

(17) Subsection (b) of section 9502 is amended by striking out "and" at the end of paragraph (2); by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) amounts determined by the Secretary to be equivalent to the taxes received in the Treasury before January 1, 1988, under section 4091 (to the extent attributable to the Airport and Airway Trust Fund financing rate), and".

(18) Paragraph (1) of section 9503(b) is amended by striking out subparagraph (A), by redesignating subparagraphs (B) through (G) as subparagraphs (A) through (F), respectively, and by striking out subparagraph (E) (as so redesignated) and inserting in lieu thereof the following:

"(E) section 4091 (relating to tax on fuels for motor vehicles and certain other fuels),".

(19) Paragraph (4) of section 9503(b) is amended to read as follows:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), there shall be taken into account the taxes imposed by sections 4081 and 4091 only to the extent attributable to the Highway Trust Fund financing rates under such sections."

(20) Subparagraph (D) of section 9503(c)(4) is amended to read as follows:

"(D) MOTORBOAT FUEL TAXES.—For purposes of this paragraph, the term 'motorboat fuel taxes' means taxes under sections 4081 and 4091 (to the extent attributable to the Highway Trust Fund financing rates under such sections) with respect to gasoline and special motor fuels used as a fuel in motorboats."

(21) Paragraph (2) of section 9503(e) is amended—

(A) by striking out "sections 4041 and 4081" and inserting in lieu thereof "sections 4081 and 4091", and

(B) by striking out "section 4041 or 4081" and inserting in lieu thereof "section 4081 or 4091".

(22) Paragraph (1) of section 9508(b) is amended to read as follows:

"(1) taxes received in the Treasury under section 4091 (relating to tax on fuels for motor vehicles and certain other fuels) to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such section,".

(23) Subparagraph (A) of section 9508(c)(2) is amended by striking out clause (ii) and all that follows and inserting in lieu thereof the following:

"(ii) credits allowed under section 34,

with respect to the taxes imposed by sections 4081 and 4091 (to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such sections)."

(24) The table of subparts for part III of subchapter A of chapter 32 is amended by inserting after the item relating to subpart A the following new item:

"Subpart B. Fuels for motor vehicles and certain other fuels."

(25) The table of sections for subchapter A of chapter 31 is amended by striking out the item relating to section 4041 and inserting in lieu thereof the following new item:

"Sec. 4041. Gasoline used in noncommercial aviation."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 1987.

(f) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—On any taxable fuel which on January 1, 1988, is held by a taxable person, there is hereby imposed a floor stocks tax at the rate of tax which would be imposed if such fuel were sold on such date in a sale subject to tax under section 4091 of the Internal Revenue Code of 1986 (as added by this section).

(2) OVERPAYMENT OF FLOOR STOCKS TAXES, ETC.—Sections 6416 and 6427 of such Code shall apply in respect of the floor stocks taxes imposed by this section so as to entitle, subject to all provisions of such sections, any person paying such floor stocks taxes to a credit or refund thereof for any reason specified in such section. All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code (as so added) shall apply to the floor stocks taxes imposed by this subsection.

(3) DUE DATE OF TAX.—The taxes imposed by this subsection shall be paid before February 16, 1988.

(4) DEFINITIONS.—For purposes of this subsection—

(A) TAXABLE FUEL.—The term "taxable fuel" means any liquid subject to tax under section 4091 of such Code (as so added).

(B) TAXABLE PERSON.—The term "taxable person" means any person who holds any taxable fuel on which no tax has been imposed under section 4041 of such Code (as in effect on the day before the date of the enactment of this Act) unless the taxpayer establishes to the satisfaction of the Secretary that tax will be imposed on the sale of such fuel by such person (or any subsequent seller) under section 4091 of such Code (as so added) or the use by such person of such fuel will be for a nontaxable purpose.

(C) HELD BY A TAXABLE PERSON.—An article shall be treated as held by a person if title thereto has passed to such person (whether or not delivery to such person has been made).

(5) TRANSFER OF FLOOR STOCK REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4091 of such Code (as so added).

SEC. 4573. EXTENSION OF TEMPORARY INCREASE IN AMOUNT OF TAX IMPOSED ON COAL PRODUCERS.

Subparagraph (A) of section 4121(e)(2) (relating to the temporary increase termination date) is amended by striking out "January 1, 1996" and inserting in lieu thereof "January 1, 2014".

PART IX—EMPLOYMENT TAXES

SEC. 4581. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYEES FOR 1988 AND THEREAFTER.

(a) IN GENERAL.—Subsection (b) of section 3201 (relating to tier 2 employee tax) is amended to read as follows:

"(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to compensation received after December 31, 1987.

SEC. 4582. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYERS FOR 1988 AND THEREAFTER.

(a) IN GENERAL.—Subsection (b) of section 3221 (relating to tier 2 employer tax) is amended to read as follows:

"(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to compensation paid after December 31, 1987.

SEC. 4583. COMMISSION ON RAILROAD RETIREMENT REFORM.

(a) COMMISSION ON RAILROAD RETIREMENT REFORM.—There is established a commission to be known as the Commission on Railroad Retirement Reform (in this section referred to as the "Commission").

(b) STUDY.—The Commission shall conduct a comprehensive study of the issues pertaining to the long-term financing, structure, and objectives of the railroad retirement system. The Commission shall submit recommendations to the Congress for revisions in, or alternatives to, the current system, to assure the provision of adequate retirement benefits to former, present, and future railroad employees on an actuarially sound basis. The study will take into account—

(1) the possibility of restructuring the financing of railroad retirement benefits through increases in the tier 2 tax rate, increases in the tier 2 tax wage base, the imposition of a tax on operating revenues, revisions in the investment policy of the railroad retirement pension fund, and establishing a privately funded and administered railroad industry pension plan;

(2) the economic outlook for the railroad industry, and the nature of the relationships between the railroad retirement system, levels of railroad employment and compensation, and the performance of the rail sector; and

(3) any other matters which the Commission considers would be necessary, appropriate, or useful to the Congress in developing legislation to reform the railroad retirement system.

(c) MEMBERSHIP OF THE COMMISSION.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 8 members, as follows:

(A) 4 individuals appointed by the President—

(i) one of whom shall be appointed on the basis of recommendations made by representatives of employers (as defined in section 1(a) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employers concerned,

(ii) one of whom shall be appointed on the basis of recommendations made by representatives of employees (as defined in section 1(b) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employees concerned,

(iii) one of whom shall be appointed on the basis of recommendations made by representatives of commuter railroads, and

(iv) one of whom shall be appointed from members of the public;

(B) 2 individuals appointed by the Speaker of the House of Representatives from among members of the public—

(i) one of whom shall be appointed after consultation with the Chairman of the Committee on Ways and Means of the House of Representatives, and

(ii) one of whom shall be appointed after consultation with the Chairman of the Committee on Energy and Commerce of the House of Representatives; and

(C) 2 individuals appointed by the President pro tempore of the Senate from among members of the public—

(i) one of whom shall be appointed after consultation with the Chairman of the Committee on Finance of the Senate, and

(ii) one of whom shall be appointed after consultation with the Chairman of the Committee on Labor and Human Resources of the Senate.

All public members of the Commission shall be appointed from among individuals who are not in the employment of and are not pecuniarily or otherwise interested in any employer (as so defined) or organization of employees (as so defined). In making appointments under this section, the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall ensure that the members of the Commission collectively, possess special knowledge of retirement income policy, social insurance, private pensions, taxation, and the structure of the transportation industry. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(2) BASIC PAY.—The members of the Commission shall each be paid at a rate equal to the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(3) QUORUM.—Four members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(4) CHAIRMAN.—The President shall appoint as Chairman one member from the members appointed from the public.

(d) STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.—

(1) STAFF.—Subject to such rules as may be prescribed by the Commission, the Chairman may appoint and fix the pay of such personnel as the Chairman considers appropriate.

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(3) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the Railroad Retirement Board and any other Federal agency may detail, on a reimbursable basis, any of the personnel thereof to the Commission to assist the Commission in carrying out its duties under this section.

(e) ACCESS TO OFFICIAL DATA AND SERVICES.—

(1) OFFICIAL DATA.—The Commission may, as appropriate, secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the

head of such department or agency shall, as appropriate, furnish such information to the Commission.

(2) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(3) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) REPORT.—The Commission shall transmit a report to the President and to each House of Congress not later than October 1, 1989. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its legislative recommendations.

(g) TERMINATION.—The Commission shall cease to exist 60 days after submitting its report pursuant to subsection (f).

SEC. 4584. TRANSFER TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended—

(1) by inserting "(other than amounts described in subparagraph (B))" after "amounts",

(2) by striking out "1988" and inserting in lieu thereof "1990", and

(3) by striking out the last sentence.

SEC. 4585. EXTENSION OF FUTA REPAYMENT TAX.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 3301 of the Federal Unemployment Tax Act (26 U.S.C. 3301) are amended to read as follows:

"(1) 6.2 percent in the case of calendar years 1988, 1989, and 1990; or

"(2) 6.0 percent in the case of calendar year 1991 and each calendar year thereafter;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to wages paid on or after January 1, 1988.

SEC. 4586. TRANSFER OF FUNDS INTO THE FEDERAL UNEMPLOYMENT ACCOUNT AND THE EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) IN GENERAL.—Section 901 of the Social Security Act (42 U.S.C. 1101) is amended by adding at the end the following new subsection:

"Transfers For Calendar Years 1988, 1989, and 1990

"(g)(1) With respect to calendar years 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account—

"(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(1) of the Federal Unemployment Tax Act which is attributable to the difference in the tax rates between paragraphs (1) and (2) of such section; and

"(B) to the extended unemployment compensation account an amount equal to 50 percent of such amount of tax received.

"(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) with respect to wages paid during such calendar years."

(b) INCREASE IN THE LIMITATION ON THE AMOUNTS IN SUCH ACCOUNTS.—(1) Section 902(a)(2) of such Act (42 U.S.C. 1102(a)(2)) is amended by striking out "one-eighth" and inserting in lieu thereof "five-eighths".

(2) Section 905(b)(2)(B) of such Act (42 U.S.C. 1105(b)(2)(B)) is amended by striking out "one-eighth" and inserting in lieu thereof "three-eighths".

(c) CONFORMING AMENDMENTS.—(1) Section 905(b)(1) of such Act (42 U.S.C. 1105(b)(1)) is amended by striking out the last sentence thereof.

(2) Section 901(c)(3)(C) of such Act (42 U.S.C. 1101(c)(3)(C)) is amended by striking out "(i)" and all that follows through the period and inserting in lieu thereof "a tax rate of 0.6 percent."

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 4587. APPLICATION OF EMPLOYER TAXES TO EMPLOYEES' CASH TIPS.

(a) APPLICATION OF TAX TO TIPS.—Section 3121(q) (relating to inclusion of tips for employee taxes) is amended—

(1) by striking "EMPLOYEE TAXES" in the heading and inserting "BOTH EMPLOYEE AND EMPLOYER TAXES";

(2) by striking "other than for purposes of the taxes imposed by section 3111";

(3) by striking "remuneration for employment" and inserting "remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111)"; and

(4) by inserting after "at the time received" the following: "; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary".

(b) CONFORMING AMENDMENTS.—(1) Subsections (a) and (b) of section 3111(a) (relating to rate of tax on employers) are each amended by striking "and (t)".

(2) Section 3121(t) (relating to special rule) is repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to tips received (and wages paid) on and after January 1, 1988.

SEC. 4588. COVERAGE OF INACTIVE DUTY MILITARY TRAINING.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (1) of section 210(l) of the Social Security Act is amended to read as follows:

"(l)(1) Except as provided in paragraph (4), the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include—

"(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed after December 1987 by an individual as a member of a uniformed service on inactive duty training.".

(b) FICA AMENDMENT.—Paragraph (1) of section 3121(m) (relating to inclusion of service in the uniformed services) is amended to read as follows:

"(1) INCLUSION OF SERVICE.—The term 'employment' shall, notwithstanding the provisions of subsection (b) of this section, include—

"(A) service performed by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed by an individual as a member of a uniformed service on inactive duty training.".

(c) COMPUTATION OF WAGES.—

(1) IN GENERAL.—Paragraph (2) of section 3121(i) (relating to computation of wages for service in the uniformed services) is amended by inserting "and his compensation for inactive duty training that is computed as a rate of basic pay" after "basic pay".

(2) CONFORMING AMENDMENT.—The second paragraph following subsection (s) of section 209 of the Social Security Act (42 U.S.C. 409) is amended by inserting "and his compensation for inactive duty training that is computed as a rate of basic pay" after "basic pay".

(d) CONFORMING AMENDMENT.—Section 229(a) of the Social Security Act (42 U.S.C. 429) is amended by striking out "section 210(l)" and inserting in lieu thereof "section 210(l)(1)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 4589. COVERAGE OF ALL CASH PAY OF AGRICULTURAL EMPLOYEES WHOSE EMPLOYERS SPEND $2,500 OR MORE A YEAR FOR AGRICULTURAL LABOR.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (2) of section 209(h) of the Social Security Act is amended by striking clause (B) and inserting "(B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;".

(b) FICA AMENDMENT.—Subparagraph (B) of section 3121(a)(8) (relating to wages) is amended by striking clause (ii) and inserting "(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration for agricultural labor paid after December 31, 1987.5

SEC. 4590. COVERAGE OF THE EMPLOYER COST OF GROUP-TERM LIFE INSURANCE.

(a) Coverage Under Old-Age, Survivors, and Disability Insurance Program.—

(1) Social security act amendment.—Paragraph (3) of section 209(b) of the Social Security Act is amended by striking "death" and inserting "death, except that this subsection (b) does not apply to such amount to the extent of the amount includible in the gross income of the employee under the Internal Revenue Code of 1986".

(2) FICA amendment.—Subparagraph (C) of section 3121(a)(2) (relating to wages) is amended by striking "death" and inserting "death, except that this paragraph does not apply to such amount to the extent of the amount includible in the gross income of the employee".

(b) Effective Date.—The amendments made by subsection (a) shall apply with respect to group-term life insurance coverage in effect after December 31, 1987.

SEC. 4591. COVERAGE OF SERVICES PERFORMED BY ONE SPOUSE IN THE EMPLOY OF THE OTHER.

(a) Social Security Act Amendments.—

(1) In general.—Subparagraph (A) of section 210(a)(3) of the Social Security Act is amended by striking "performed by an individual in the employ of his spouse, and service".

(2) Exception for certain domestic service in the private home of a spouse.—Paragraph (3) of section 210(a) of such Act is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

(b) FICA Amendments.—

(1) In general.—Subparagraph (A) of section 3121(b)(3) (relating to employment) is amended by striking "performed by an individual in the employ of his spouse, and service".

(2) Exception for certain domestic service in the private home of a spouse.—Paragraph (3) of section 3121(b) (relating to employment) is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

(c) Effective Date.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 4592. TREATMENT OF SERVICE PERFORMED BY AN INDIVIDUAL IN THE EMPLOY OF A PARENT.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 118.—Subparagraph (A) of section 210(a)(3) of the Social Security Act (as amended by section 4591(a)(1) of this Act) is further amended by striking "twenty-one" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 210(a)(3) of such Act (as amended by section 4591(a)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

(b) FICA AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 3121(b)(3) (as amended by section 6591(b)(1) of this Act) is further amended by striking "21" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 3121(b)(3) (as amended by section 6591(b)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

PART X—USER FEES

SEC. 4595. FEES FOR REQUESTS FOR RULING, DETERMINATION, AND SIMILAR LETTERS.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate (hereinafter in this section referred to as the "Secretary") shall establish a program requiring the payment of user fees for requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters and for similar requests.

(b) PROGRAM CRITERIA.—

(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

(A) shall vary according to categories (or subcategories) established by the Secretary,

(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

(C) shall be payable in advance.

(2) EXEMPTIONS, ETC.—The Secretary shall provide for such exemptions (and reduced fees) under such program as he determines to be appropriate.

(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

Category	Average Fee
Employee plan ruling and opinion	$400
Exempt organization ruling	$320
Employee plan determination	$250
Exempt organization determination	$200
Chief counsel ruling	$200

(c) Application of Section.—Subsection (a) shall apply with respect to requests made on or after the 1st day of the second calendar month beginning after the date of the enactment of this Act and before September 30, 1990.

SEC. 4596. OCCUPATIONAL TAXES RELATING TO ALCOHOL, TOBACCO, AND FIREARMS.

(a) Occupational Taxes on Distilled Spirits Plants, Bonded Wine Cellars, Breweries, Etc.—

(1) Distilled spirits plants, bonded wine cellars, etc.—

(A) In general.—Part II of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer) is amended by inserting before subpart B the following new subpart:

"Subpart A—Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Etc.

"Sec. 5081. Imposition and rate of tax.

"SEC. 5081. IMPOSITION AND RATE OF TAX.

"(a) General Rule.—Every proprietor of—

"(1) a distilled spirits plant,

"(2) a bonded wine cellar,

"(3) a bonded wine warehouse, or

"(4) a taxpaid wine bottling house,

shall pay a tax of $1,000 per year in respect of each such premises.

"(b) Reduced Rates for Small Proprietors.—

"(1) In general.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) Controlled group rules.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) Certain rules to apply.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(B) Technical amendments.—

(i) Subsection (a) of section 5691 is amended by striking out "the business of a brewer, wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, or limited retail dealer," and inserting in lieu thereof "a business subject to a special tax imposed by part II of subchapter A or section 5276 (relating to occupational taxes)".

(ii) The section heading of section 5691 is amended by striking out "RELATING TO LIQUORS".

(iii) The table of sections for part V of subchapter J of chapter 51 is amended by striking out "relating to liquors" in the item relating to section 5691.

(C) Clerical amendment.—The table of subparts for part II of subchapter A of chapter 51 is amended by inserting before the item relating to subpart B the following new item:

"Subpart A. Proprietors of distilled spirits plants, bonded wine cellars, etc."

(2) Breweries.—Section 5091 (relating to imposition and rate of tax on brewers) is amended to read as follows:

"SEC. 5091. IMPOSITION AND RATE OF TAX.

"(a) General Rule.—Every brewer shall pay a tax of $1,000 per year in respect of each brewery.

"(b) Reduced Rates for Small Brewers.—Rules similar to the rules of section 5081(b) shall apply for purposes of subsection (a)."

(b) Wholesale Dealers in Liquors and Beer.—

(1) Liquors.—Subsection (a) of section 5111 (relating to imposition and rate of tax on wholesale dealers) is amended by striking out "$255" and inserting in lieu thereof "$500".

(2) Beer.—Subsection (b) of section 5111 is amended by striking out "$123" and inserting in lieu thereof "$500".

(c) Retail Dealers in Liquors and Beer.—

(1) Liquors.—Subsection (a) of section 5121 (relating to imposition and rate of tax on retail dealers) is amended by striking out "$54" and inserting in lieu thereof "$250".

(2) Beer.—Subsection (b) of section 5121 is amended by striking out "$24" and inserting in lieu thereof "$250".

(3) Repeal of tax on limited retail dealers.—Subsection (c) of section 5121 is hereby repealed.

(d) Tax on Nonbeverage Domestic Drawback.—Subsection (b) of section 5131 (relating to eligibility and rate of tax) is amended to read as follows:

"(b) Rate of Tax.—The special tax imposed by subsection (a) shall be $500 per year."

(e) Tax on Industrial Use of Distilled Spirits.—

(1) In general.—Subchapter D of chapter 51 (relating to industrial use of distilled spirits) is amended by adding at the end thereof the following new section:

"SEC. 5276. OCCUPATIONAL TAX.

"(a) General Rule.—A permit issued under section 5271 shall not be valid with respect to acts conducted at any place unless the person holding such permit pays a special tax of $250 with respect to such place.

"(b) Certain Occupational Tax Rules To Apply.—Rules similar to the rules of subpart G of part II of subchapter A shall apply for purposes of this section."

(2) Clerical amendment.—The table of sections for such subchapter is amended by adding at the end thereof the following new item:

"Sec. 5276. Occupational tax."

(f) Tobacco.—

(1) In general.—Chapter 52 (relating to cigars, cigarettes, smokeless tobacco and cigarette papers and tubes) is amended by redesignating subchapters D, E, and F as subchapters E, F,

and G, respectively, and by inserting after subchapter C the following new subchapter:

"Subchapter D—Occupational Tax

"Sec. 5731. Imposition and rate of tax.

"SEC. 5731. IMPOSITION AND RATE OF TAX.

"(a) GENERAL RULE.—Every person engaged in business as—

"(1) a manufacturer of tobacco products,

"(2) a manufacturer of cigarette papers and tubes, or

"(3) an export warehouse proprietor,

shall pay a tax of $1,000 per year in respect of each premises at which such business is carried on.

"(b) REDUCED RATES FOR SMALL PROPRIETORS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

"(c) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A of chapter 51 shall apply for purposes of this section.

"(d) PENALTY FOR FAILURE TO REGISTER.—Any person engaged in a business referred to in subsection (a) who willfully fails to pay the tax imposed by subsection (a) shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense."

(2) CLERICAL AMENDMENT.—The table of subchapters for chapter 52 is amended by redesignating the items relating to subchapters D, E, and F as items relating to subchapters E, F, and G, respectively, and by inserting after the item relating to subchapter C the following new item:

"Subchapter D. Occupational tax."

(g) FIREARMS.—

(1) IN GENERAL.—Section 5801 (relating to occupational taxes) is amended to read as follows:

"SEC. 5801. IMPOSITION OF TAX.

"(a) GENERAL RULE.—On 1st engaging in business and thereafter on or before July 1 of each year, every importer, manufacturer, and dealer in firearms shall pay a special (occupational) tax for each place of business at the following rates:

"(1) Importers and manufacturers: $1,000 a year or fraction thereof.

"(2) Dealers: $500 a year or fraction thereof.

"(b) REDUCED RATES OF TAX FOR SMALL IMPORTERS AND MANUFACTURERS.—

"(1) In general.—Paragraph (1) of subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) Controlled group rules.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) Certain rules to apply.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(2) Clerical amendment.—The table of sections for part I of subchapter A of chapter 53 is amended by striking out the item relating to section 5801 and inserting in lieu thereof the following new item:

"Sec. 5801. Imposition of tax."

(h) Effective Date.—

(1) In general.—The amendments made by this section shall take effect on January 1, 1988.

(2) All taxpayers treated as commencing in business on January 1, 1988.—

(A) In general.—Any person engaged on January 1, 1988, in any trade or business which is subject to an occupational tax shall be treated for purposes of such tax as having 1st engaged in such trade or business on such date.

(B) Limitation on amount of tax.—In the case of a taxpayer who paid an occupational tax in respect of any premises for any taxable period which began before January 1, 1988, and includes such date, the amount of the occupational tax imposed by reason of subparagraph (A) in respect of such premises shall not exceed an amount equal to 1/2 the excess (if any) of—

(i) the rate of such tax as in effect on January 1, 1988, over

(ii) the rate of such tax as in effect on December 31, 1987.

(C) Occupational tax.—For purposes of this paragraph, the term "occupational tax" means any tax imposed under part II of subchapter A of chapter 51, section 5276, section 5731, or section 5801 of the Internal Revenue Code of 1986 (as amended by this section).

(3) Due date of tax.—Any amount of tax due on January 1, 1988, by reason of the amendments made by this section, shall be due on April 1, 1988.

SEC. 4597. CUSTOMS USER FEES.

(a) Fees Treated as Offsetting Receipts.—

(1) Subsection (f) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(A) by inserting "as offsetting receipts" after "deposited" in paragraph (1),

(B) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2)(A) The Secretary of the Treasury is authorized and directed to pay out of the Customs User Fee Account all salaries and expenses of the United States Customs Service that are incurred in conducting commercial operations.

"(B) The authority to make payments under subparagraph (A) during any fiscal year (other than payments described in subparagraph (C)) shall be subject to such dollar limitations as are provided in any law making appropriations for such fiscal year. Payments may be made under subparagraph (A) during a fiscal year only if a dollar limitation on the total amount of payments that may be made under subparagraph (A) during such fiscal year (other than payments described in subparagraph (C)) is provided by a law making appropriations for such fiscal year.

"(C) Any dollar limitation described in subparagraph (B) shall not apply to any payments made out of the Customs User Fee Account for expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services for which the recipient of such services is not required to reimburse the Secretary of the Treasury, and such payments shall not be taken into account in applying such a limitation.

"(D) All funds in the Customs User Fee Account shall only be available for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations.", and

(C) by redesignating paragraph (4) as paragraph (3).

(b) ADJUSTMENT OF MERCHANDISE PROCESSING FEE.—

(1) Paragraph (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(10)) is amended to read as follows:

"(10) For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse, for consumption during any fiscal year beginning after September 30, 1988, a fee at a rate equal to the lesser of—

"(A) 0.17 percent ad valorem, or

"(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of receipts during the fiscal year equal to the amount of the dollar limitation authorized under section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 on the total amount of payments that may be made under subsection (f)(2)(A) of this section during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), reduced by the sum of—

"(i) the excess, if any, of—

"(I) the amount of such limitation for the fiscal year, over

"(II) the amount of the dollar limitation imposed by any law making appropriations for the fiscal year on the total amount of payments which may be made under subsection (f)(2)(A) during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), plus

"(ii) the amount of an estimate made by the Secretary of the Treasury of the amount of funds that—

"(I) will be in the Customs User Fee Account at the beginning of the fiscal year, and

"(II) will not be used to make payments described in subsection (f)(2)(C) of this section, plus

"(iii) the amount of an estimate made by the Secretary of the Treasury of the amount of receipts from fees imposed by any paragraph of this subsection other than this paragraph that—

"(I) will be deposited in to the Customs User Fee Account during the fiscal year, and

"(II) will not be used to make payments described in subsection (f)(2)(C) of this section.

If no authorization is provided under section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 for the amount of the dollar limitation that may be imposed on the total amount of payments under subsection (f)(2)(A) of this section during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), the rate of the fee imposed under this paragraph for the fiscal year shall be 0.17 percent ad valorem.".

(2) Subparagraph (B) of section 13031(b)(8) of such Act (19 U.S.C. 58c(b)(8)(B)) is amended—

(A) by striking out "on which any funds are appropriated to the United States Customs Service for salaries or expenses incurred in conducting commercial operations" in clause (i) and inserting in lieu thereof "of enactment of any law making appropriations for a fiscal year that provides a dollar limitation on the total amount of payments that may be made under subsection (f)(2)(A) during the fiscal year (other than payments described in subsection (f)(2)(C))", and

(B) by striking out "an appropriation to the United States Customs Service if the funds appropriated" in clause (ii) and inserting in lieu thereof "a law described in clause (i) if the funds appropriated by such law".

(c) FEE IMPOSED ON FOREIGN CONTENT OF CERTAIN SCHEDULE 8 ARTICLES.—

(1) Subparagraph (A) of section 13031(a)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended to read as follows:

"(A) provided for under any item in schedule 8 of the Tariff Schedules of the United States except item 806.30 or 807.00,".

(2) Subparagraph (A) of section 13031(b)(8) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended—

(i) by striking out "and" at the end of clause (i);

(ii) by striking out the period at the end of clause (ii) and inserting in lieu thereof a semicolon; and

(iii) by adding at the end thereof the following:

"(iii) in the case of merchandise classified under item 806.30 of the Tariff Schedules of the United States, be applied to the value of the foreign repairs or alterations to the merchandise; and

"(iv) in the case of merchandise classified under item 807.00 of such Schedules, be applied to the full value of the merchandise, less the cost or value of the component United States products.

With respect to merchandise that is classified under item 806.30 or 807.00 of such Schedules and is duty-free, the Secretary may collect the fee charged on the processing of the merchandise under subsection (a)(10) on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.".

(d) PROVISION OF CUSTOMS SERVICES AT FOREIGN TRADE ZONES AND BONDED WAREHOUSES.—Paragraph (4) of section 13031(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(4)) is amended to read as follows:

"(4) Notwithstanding any other provision of law (other than paragraph (2)), during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected—

"(A) for any—

"(i) cargo inspection, clearance, or other customs activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or

"(ii) customs personnel provided,

in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States; or

"(B) in connection with—

"(i) the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.); or

"(ii) the designation or operation (including Customs Service supervision) of any bonded warehouse under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555).

(e) EXTENSION OF THE CUSTOMS USER FEES.—Paragraph (3) of section 13031(j) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c, note) is amended by striking out "1989" and inserting in lieu thereof "1990".

(f) EFFECTIVE DATES.—

(1) Except as otherwise provided under this subsection, the amendments made by this section shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date that is 15 days after the date of enactment of this Act.

(2) The amendments made by subsection (a) shall take effect on October 1, 1990.

(3) The amendments made by subsection (b) shall take effect on October 1, 1988.

PART XI—DEBT COLLECTION

SEC. 4601. 3-YEAR EXTENSION OF PROVISIONS RELATING TO COLLECTION OF NON-TAX DEBTS OWED TO FEDERAL AGENCIES.

(a) GENERAL RULE.—Subsection (c) of section 2653 of the Deficit Reduction Act of 1984 is amended by striking out "January 1, 1988" and inserting in lieu thereof "January 1, 1991".

(b) CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF PROVISION.—

(1) Nothing in the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall be construed as exempting debts of corporations or any other category of persons from the application of such amendments.

(2) It is the intent of the Congress that, to the extent practicable, the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall extend to all Federal agencies (as defined in the amendments made by such section).

(3) The Secretary of the Treasury shall issue regulations to carry out the purposes of this subsection.

(c) STUDY BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States, in consultation with the Secretary of the Treasury or his delegate, shall conduct a study of the operation and effectiveness of the amendments made by section 2653 of the Deficit Reduction Act of 1984. The study shall compile and evaluate information on the effect of those amendments on voluntary compliance with the income tax laws. Not later than April 1, 1989, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report of the study conducted under this subsection, together with such recommendations as he may deem advisable.

PART XII—ESTATE TAX PROVISIONS RELATING TO EMPLOYEE STOCK OWNERSHIP

SEC. 4611. CONGRESSIONAL CLARIFICATION OF ESTATE TAX DEDUCTION FOR SALES OF EMPLOYER SECURITIES.

(a) INTENT OF CONGRESS IN ENACTING SECTION 2057 OF THE INTERNAL REVENUE CODE OF 1986.—Section 2057 (relating to sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED PROCEEDS FROM QUALIFIED SALES.—

"(1) IN GENERAL.—For purposes of this section, the proceeds of a sale of employer securities by an executor to an employee stock ownership plan or an eligible worker-owned cooperative shall not be treated as qualified proceeds from a qualified sale unless—

"(A) the decedent directly owned the securities immediately before death, and

"(B) after the sale, the employer securities—

"(i) are allocated to participants, or

"(ii) are held for future allocation in connection with—

"(I) an exempt loan under the rules of section 4975, or

"(II) a transfer of assets under the rules of section 4980(c)(3).

"(2) No SUBSTITUTION PERMITTED.—For purposes of paragraph (1)(B), except in the case of a bona fide business transaction (e.g., a substitution of employer securities in connection with a merger of employers), employer securities shall not be treated as allocated or held for future allocation to the extent that such securities are allocated or held for future allocation in substitution of other employer securities that had been allocated or held for future allocation."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986.

SEC. 4612. MODIFICATIONS OF ESTATE TAX DEDUCTION FOR SALE OF EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 2057 (relating to estate tax deduction for sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended to read as follows:

"SEC. 2057. SALES OF EMPLOYER SECURITIES TO EMPLOYEE STOCK OWNERSHIP PLANS OR WORKER-OWNED COOPERATIVES.

"(a) GENERAL RULE.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to 50 percent of the proceeds of any sale of any qualified employer securities to—

"(1) an employee stock ownership plan, or

"(2) an eligible worker-owned cooperative.

"(b) LIMITATIONS.—

"(1) MAXIMUM REDUCTION IN TAX LIABILITY.—The amount allowable as a deduction under subsection (a) shall not exceed the amount which would result in an aggregate reduction in the tax imposed by section 2001 (determined without regard to any credit allowable against such tax) equal to $750,000.

"(2) DEDUCTION SHALL NOT EXCEED 50 PERCENT OF TAXABLE ESTATE.—The amount of the deduction allowable under subsection (a) shall not exceed 50 percent of the taxable estate (determined without regard to this section).

"(c) LIMITATIONS ON PROCEEDS WHICH MAY BE TAKEN INTO ACCOUNT.—

"(1) DISPOSITIONS BY PLAN OR COOPERATIVE WITHIN 1 YEAR OF SALE.—

"(A) IN GENERAL.—Proceeds from a sale which are taken into account under subsection (a) shall be reduced (but not below zero) by the net sale amount.

"(B) NET SALE AMOUNT.—For purposes of subparagraph (A), the term 'net sale amount' means the excess (if any) of—

"(i) the proceeds of the plan or cooperative from the disposition of employer securities during the 1-year period immediately preceding such sale, over

"(ii) the cost of employer securities purchased by such plan or cooperative during such 1-year period.

"(C) EXCEPTIONS.—For purposes of subparagraph (B)(i), there shall not be taken into account any proceeds of a plan or cooperative from a disposition described in section 4978A(e).

"(D) AGGREGATION RULES.—For purposes of this paragraph, all employee stock ownership plans maintained by an employer shall be treated as 1 plan.

"(2) SECURITIES MUST BE ACQUIRED BY PLAN FROM ASSETS WHICH ARE NOT TRANSFERRED ASSETS.—

"(A) IN GENERAL.—Proceeds from a sale shall not be taken into account under subsection (a) to the extent that such proceeds (as reduced under paragraph (1)) are attributable to transferred assets. For purposes of the preceding sentence, all assets of a plan or cooperative (other than qualified employer securities) shall be treated as first acquired out of transferred assets.

"(B) TRANSFERRED ASSETS.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'transferred assets' means assets of an employee stock ownership plan which—

"(I) are attributable to assets held by a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a) (other than an employee stock ownership plan of the employer), or

"(II) were held by the plan when it was not an employee stock ownership plan.

"(ii) EXCEPTION FOR ASSETS HELD ON FEBRUARY 27, 1987.—The term 'transferred assets' shall not include any asset held by the employee stock ownership plan on February 27, 1987.

"(iii) SECRETARIAL AUTHORITY TO WAIVE TREATMENT AS TRANSFERRED ASSET.—The Secretary may provide that assets or a class of assets shall not be treated as transferred assets if the Secretary finds such treatment is not necessary to carry out the purposes of this paragraph.

"(3) OTHER PROCEEDS.—The following proceeds shall not be taken into account under subsection (a):

"(A) PROCEEDS FROM SALE AFTER DUE DATE FOR RETURN.—Any proceeds from a sale which occurs after the date on which the return of the tax imposed by section 2001 is required to be filed (determined by taking into account any extension of time for filing).

"(B) PROCEEDS FROM SALE OF CERTAIN SECURITIES.—Any proceeds from a sale of employer securities which were received by the decedent—

"(i) in a distribution from a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a), or

"(ii) as a transfer pursuant to an option or other right to acquire stock to which section 83, 422, 422A, 423, or 424 applies.

Any employer security the basis of which is determined by reference to any employer security described in the preceding sentence shall be treated as an employer security to which this subparagraph applies.

"(d) QUALIFIED EMPLOYER SECURITIES.—

"(1) IN GENERAL.—The term 'qualified employer securities' means employer securities—

"(A) which are issued by a domestic corporation which has no stock outstanding which is readily tradable on an established securities market,

"(B) which are includible in the gross estate of the decedent,

"(C) which would have been includible in the gross estate of the decedent if the decedent had died at any time during the shorter of—

"(i) the 5-year period ending on the date of death, or

"(ii) the period beginning on October 22, 1986, and ending on the date of death, and

"(D) with respect to which the executor elects the application of this section.

Subparagraph (C) shall not apply if the decedent died on or before October 22, 1986.

"(2) CERTAIN ASSETS HELD BY SPOUSE.—For purposes of paragraph (1)(C), any employer security which would have been includible in the gross estate of the spouse of a decedent during any period if the spouse had died during such period shall be treated as includible in the gross estate of the decedent during such period.

"(3) PERIODS DURING WHICH DECEDENT NOT AT RISK.—For purposes of paragraph (1)(C), employer securities shall not be treated as includible in the gross estate of the decedent during any period described in section 246(c)(4).

"(e) WRITTEN STATEMENT REQUIRED.—

"(1) IN GENERAL.—No deduction shall be allowed under subsection (a) unless the executor of the estate of the decedent files with the Secretary the statement described in paragraph (2).

"(2) STATEMENT.—A statement is described in this paragraph if it is a verified written statement—

"(A) which is made by—

"(i) the employer whose employees are covered by the employee stock ownership plan, or

"(ii) any authorized officer of the eligible worker-owned cooperative, and

"(B) which—

"(i) acknowledges that the sale of employer securities to the plan or cooperative is a sale to which sections 4978A and 4979A apply, and "(ii) certifies—

"(I) the net sale amount for purposes of subsection (c)(1), and

"(II) the amount of assets which are not transferred assets for purposes of subsection (c)(2).

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) EMPLOYER SECURITIES.—The term 'employer securities' has the meaning given such term by section 409(1).

"(2) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' means—

"(A) a tax credit employee stock ownership plan (within the meaning of section 409(a)), or

"(B) a plan described in section 4975(e)(7).

"(3) ELIGIBLE WORKER-OWNED COOPERATIVE.—The term 'eligible worker-owned cooperative' has the meaning given such term by section 1042(c).

"(4) EMPLOYER.—Except to the extent provided in regulations, the term 'employer' includes any person treated as an employer under subsections (b), (c), (m), and (o) of section 414.

"(g) TERMINATION.—This section shall not apply to any sale after December 31, 1991."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to sales after February 27, 1987.

(2) PROVISIONS TAKING EFFECT AS IF INCLUDED IN THE TAX REFORM ACT OF 1986.—The following provisions shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986:

(A) Section 2057(f)(2) of the Internal Revenue Code of 1986, as added by this section.

(B) The repeal of the requirement that a sale be made by the executor of an estate to qualify for purposes of section 2057 of such Code.

(3) DIRECT OWNERSHIP REQUIREMENT.—If the requirements of section 2057(d)(1)(B) of such Code (as modified by section 2057(d)(2) of such Code), as in effect after the amendments made by this section, are met with respect to any employer securities sold after October 22, 1986, and before February 28, 1987, such securities shall be treated as having been directly owned by the decedent for purposes of section 2057 of such Code, as in effect before such amendments.

(4) REDUCTION FOR SALES ON OR BEFORE FEBRUARY 26, 1987.—In applying the limitations of subsection (b) of section 2057 of such Code to sales after February 27, 1987, there shall be taken into account sales on or before February 27, 1987, to which section 2057 of such Code applied.

SEC. 4613. EXCISE TAXES ON PLANS OR COOPERATIVES DISPOSING OF EMPLOYER SECURITIES FOR WHICH ESTATE TAX DEDUCTION WAS ALLOWED.

(a) IN GENERAL.—Chapter 43 (relating to excise taxes on qualified pension, etc., plans) is amended by inserting after section 4978 the following new section:

"SEC. 4978A. TAX ON CERTAIN DISPOSITIONS OF EMPLOYER SECURITIES TO WHICH SECTION 2057 APPLIED.

"(a) IMPOSITION OF TAX.—In the case of a taxable event involving qualified employer securities held by an employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax equal to the amount determined under subsection (b).

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be equal to 30 percent of—

"(A) the amount realized on the disposition in the case of a taxable event described in paragraph (1) or (2) of subsection (c), or

"(B) the amount repaid on the loan in the case of a taxable event described in paragraph (3) of subsection (c).

"(2) DISPOSITIONS OTHER THAN SALES OR EXCHANGES.—For purposes of paragraph (1), in the case of a disposition of employer securities which is not a sale or exchange, the amount realized on such disposition shall be the fair market value of such employer securities at the time of disposition.

"(c) TAXABLE EVENT.—For purposes of this section, the term 'taxable event' means the following:

"(1) DISPOSITION WITHIN 3 YEARS OF ACQUISITION.—Any disposition of employer securities by an employee stock ownership plan or eligible worker-owned cooperative within 3 years after such plan or cooperative acquired qualified employer securities.

"(2) STOCKS DISPOSED OF BEFORE ALLOCATION.—Any disposition of qualified employer securities to which paragraph (1) does not apply if—

"(A) such disposition occurs before such securities are allocated to accounts of participants or their beneficiaries, and

"(B) the proceeds from such disposition are not so allocated.

"(3) USE OF ASSETS TO REPAY ACQUISITION LOANS.—The payment by an employee stock ownership plan of any portion of any loan used to acquire employer securities from transferred assets (within the meaning of section 2057(c)(2)(B)).

"(d) ORDERING RULES.—For purposes of this section and section 4978, any disposition of employer securities shall be treated as having been made in the following order:

"(1) First, from qualified employer securities acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(2) Second, from qualified employer securities acquired before such 3-year period unless such securities (or the proceeds from such disposition) have been allocated to accounts of participants or their beneficiaries.

"(3) Third, from qualified securities (within the meaning of section 4978(e)(2)) to which section 1042 applied acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(4) Finally, from any other employer securities. In the case of a disposition to which section 4978(d) or subsection (e) applies, the disposition of employer securities shall be treated as having been made in the opposite order of the preceding sentence.

"(e) SECTION NOT TO APPLY TO CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—This section shall not apply to any disposition described in paragraph (1) or (3) of section 4978(d).

"(2) CERTAIN REORGANIZATIONS.—For purposes of this section, any exchange of qualified employer securities for employer securities of another corporation in any reorganization described in section 368(a)(1) shall not be treated as a disposition, but the employer securities which were received shall be treated—

"(A) as qualified employer securities of the plan or cooperative, and

"(B) as having been held by the plan or cooperative during the period the qualified employer securities were held.

"(3) DISPOSITION TO MEET DIVERSIFICATION REQUIREMENTS.—Any disposition which is made to meet the requirements of section 401(a)(28) shall not be treated as a disposition.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) TERMS USED IN SECTION 2057.—Any term used in this section which is used in section 2057 shall have the meaning given such term by section 2057.

"(2) QUALIFIED EMPLOYER SECURITIES.—The term 'qualified employer securities' has the meaning given such term by section 2057, except that such term shall include employer securities sold before February 27, 1987, for which a deduction was allowed under section 2057.

"(3) DISPOSITION.—The term 'disposition' includes any distribution.

"(4) LIABILITY FOR PAYMENT OF TAXES.—The tax imposed by this section shall be paid by—

"(A) the employer, or

"(B) the eligible worker-owned cooperative, which made the written statement described in section 2057(e)."

(b) CONFORMING AMENDMENTS.—

(1) Section 4978(b)(2) is amended by striking out the parenthetical and inserting in lieu thereof "(determined as if such securities were disposed of in the order described in section 4978A(e))".

(2) The table of sections for chapter 43 is amended by inserting after the item relating to section 4978 the following new item:

"Sec. 4978A. Tax on certain dispositions of employer securities to which section 2057 applied."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986 occurring after February 27, 1987.

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